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(d) Enforcement actions undertaken by NRCS in furtherance of its Federally held property rights are under the jurisdiction of the Federal District Courts and are not subject to review under administrative appeal regulations.

§ 1415.20 Scheme or device.

(a) If it is determined by USDA that a participant has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid to such participant during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by USDA.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of payments for cost-share practices, rental contracts, or easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) A participant who succeeds to the responsibilities under this part will report in writing to USDA any interest of any kind in enrolled land that is held by a predecessor or any lender. A failure of full disclosure will be considered a scheme or device under this section.

PART 1416—EMERGENCY AGRICULTURAL DISASTER ASSISTANCE PROGRAMS

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Subpart A—General Provisions for Supplemental Agricultural Disaster Assistance Programs

§ 1416.1 Applicability.

(a) This subpart establishes general conditions for this subpart and subparts B through E of this part and applies only to those subparts. Subparts B through E cover the following programs authorized by the Agricultural Act of 2014 (Pub. L. 113–79, also referred to as the 2014 Farm Bill):

(1) Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP);

(2) Livestock Forage Disaster Program (LFP);

(3) Livestock Indemnity Payments Program (LIP); and

(4) Tree Assistance Program (TAP).

(b) To be eligible for payments under these programs, participants must comply with all provisions under this subpart and the relevant particular subpart for that program. All other provisions of law also apply.

§ 1416.2 Administration of ELAP, LFP, LIP, and TAP.

(a) The programs in subparts B through E of this part will be administered under the general supervision and direction of the Administrator, Farm Service Agency (FSA) (who also serves as the Executive Vice-President, CCC), and the Deputy Administrator for Farm Programs, FSA (referred to as the “Deputy Administrator” in this part).

(b) FSA representatives do not have authority to modify or waive any of the provisions of the regulations of this part as amended or supplemented, except as specified in paragraph (e) of this section.

(c) The State FSA committee will take any action required by the regulations of this part that the county FSA committee has not taken. The State FSA committee will also:

(1) Correct, or require a county FSA committee to correct, any action taken by such county FSA committee that is not in accordance with the regulations of this part or

(2) Require a county FSA committee to withhold taking any action that is not in accordance with this part.

(d) No provision or delegation to a State or county FSA committee will preclude the FSA Administrator, the Deputy Administrator, or a designee or other such person, from determining any question arising under the programs of this part, or from reversing or modifying any determination made by a State or county FSA committee.

(e) The Deputy Administrator may authorize State and county FSA committees to waive or modify non-statutory deadlines, or other program requirements of this part in cases where lateness or failure to meet such requirements does not adversely affect operation of the programs in this part. Participants have no right to an exception under this provision. The Deputy Administrator’s refusal to consider cases or circumstances or decision not to exercise this discretionary authority under this provision will not be considered an adverse decision and is not appealable.

§ 1416.3 Eligible producer.

(a) In general, the term “eligible producer” means, in addition to other requirements as may apply, an individual or entity described in paragraph (b) of this section that, as determined by the Secretary, assumes the production and market risks associated with the agricultural production of crops or livestock on a farm either as the owner of the farm, when there is no contract grower, or a contract grower of the livestock when there is a contract grower.

(b) To be eligible for benefits, an individual or legal entity must submit a farm operating plan for the purpose of payment limitation review in accordance with part 1400 of this chapter and be a:

(1) Citizen of the United States;

(2) Resident alien; for purposes of this part, resident alien means “lawful alien”;

(3) Partnership of citizens of the United States; or

(4) Corporation, limited liability corporation, or other farm organizational structure organized under State law.

§ 1416.5 Equitable relief.

The equitable relief provisions of part 718 of this title will not be used to

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obtain a different program result, payment, or benefit not otherwise available to a participant who satisfies any and all program eligibility provision, conditions of eligibility, or compliance provision.

§ 1416.6 Payment limitation.

(a) For 2011, no person or legal entity, excluding a joint venture or general partnership, as determined according to the rules in part 1400 of this chapter may receive more than:

(1) \$125,000 total in 2011 program year payments under LFP, SURE, ELAP, and LIP combined when at least \$25,000 of such total 2011 program year payments is from LFP or LIP for losses from October 1 through December 31, 2011. If no 2011 program year payments are issued under LFP or LIP for losses occurring from October 1, 2011, through December 31, 2011, the total amount of 2011 program year payments under LFP, SURE, ELAP, and LIP combined is limited to \$100,000.

(2) \$125,000 for the 2011 program year under TAP.

(b) For 2012 and subsequent program years, no person or legal entity, excluding a joint venture or general partnership, as determined by the rules in part 1400 of this chapter may receive, directly or indirectly, more than:

(1) \$125,000 per program year total under ELAP, LFP, and LIP combined; or

(2) \$125,000 per program year under TAP.

(c) The Deputy Administrator may take such actions as needed to avoid a duplication of benefits under the programs provided for in this part, or duplication of benefits received in other programs, and may impose such cross-program payment limitations as may be consistent with the intent of this part.

(d) Beginning with the 2014 program year, if a producer is eligible to receive benefits under this part is also eligible to receive assistance for the same loss under any other program, including, but not limited to, indemnities made under the Federal Crop Insurance Act (7 U.S.C. 1501–1524) or the noninsured crop disaster assistance program (7 U.S.C. 7333), then the producer must elect whether to receive benefits under

this part or under the other program, but not both.

(e) For losses incurred beginning on October 1, 2011, and for the purposes of administering LIP, LFP, ELAP, and TAP, the average adjusted gross income (AGI) limitation provisions in part 1400 of this chapter relating to limits on payments for persons or legal entities, excluding joint ventures and general partnerships, with certain levels of AGI will apply under this subpart and will apply to each applicant for ELAP, LFP, LIP, and TAP. Specifically, a person or legal entity with an average AGI that exceeds \$900,000 will not be eligible to receive benefits under this part.

(f) The direct attribution provisions in part 1400 of this chapter apply to ELAP, LFP, LIP, and TAP. Under those rules, any payment to any legal entity will also be considered for payment limitation purposes to be a payment to persons or legal entities with an interest in the legal entity or in a sub-entity. If any such interested person or legal entity is over the payment limitation because of payment made directly or indirectly or a combination thereof, then the payment to the actual payee will be reduced commensurate with the amount of the interest of the interested person in the payee. Likewise, by the same method, if anyone with a direct or indirect interest in a legal entity or sub-entity of a payee entity exceeds the AGI levels that would allow a participant to directly receive a payment under this part, then the payment to the actual payee will be reduced commensurately with that interest. For all purposes under this section, unless otherwise specified in part 1400 of this chapter, the AGI figure that will be relevant for a person or legal entity will be an average AGI for the three taxable years that precede the most immediately preceding complete taxable year, as determined by FSA.

§ 1416.7 Misrepresentation.

(a) A participant who is determined to have deliberately misrepresented any fact affecting a program determination made in accordance with this part, or any other part that is applicable to this part, to receive benefits for

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which the participant would not otherwise be entitled, will not be entitled to program payments and must refund all such payments received, plus interest as determined in accordance with part 1403 of this chapter. The participant will also be denied program benefits for the immediately subsequent period of at least 2 crop years, and up to 5 crop years. Interest will run from the date of the original disbursement by CCC.

(b) A participant will refund to CCC all program payments, in accordance with § 1416.11, received by such participant with respect to all contracts or applications, as may be applicable, if the participant is determined to have knowingly misrepresented any fact affecting a program determination.

§ 1416.8 Appeals.

Appeal regulations in parts 11 and 780 of this title apply to this part.

§ 1416.9 Offsets, assignments, and debt settlement.

(a) Any payment to any participant under this part will be made without regard to questions of title under State law, and without regard to any claim or lien against the commodity, or proceeds, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings in part 1403 of this chapter apply to payments made under this part.

(b) Any participant entitled to any payment may assign any payment(s) in accordance with regulations governing the assignment of payments in part 1404 of this chapter.

§ 1416.10 Records and inspections.

(a) Any participant receiving payments under any program in ELAP, LFP, LIP or TAP, or any other legal entity or person who provides information for the purposes of enabling a participant to receive a payment under ELAP, LFP, LIP, or TAP must:

(1) Maintain any books, records, and accounts supporting the information for 3 years following the end of the year during which the request for payment was submitted, and

(2) Allow authorized representatives of USDA and the Government Accountability Office, during regular business

hours, to inspect, examine, and make copies of such books or records, and to enter the farm and to inspect and verify all applicable livestock and acreage in which the participant has an interest for the purpose of confirming the accuracy of information provided by or for the participant.

(b) [Reserved]

§ 1416.11 Refunds; joint and several liability.

(a) In the event that the participant fails to comply with any term, requirement, or condition for payment or assistance arising under ELAP, LFP, LIP, or TAP and if any refund of a payment to CCC will otherwise become due in connection with this part, the participant must refund to CCC all payments made in regard to such matter, together with interest and late-payment charges as provided for in part 1403 of this chapter provided that interest will in all cases run from the date of the original disbursement.

(b) All persons with a financial interest in an operation or in an application for payment will be jointly and severally liable for any refund, including related charges, that is determined to be due CCC for any reason under this part.

§ 1416.12 Minors.

A minor child is eligible to apply for program benefits under ELAP, LFP, LIP, or TAP if all the eligibility requirements are met and the provision for minor children in part 1400 of this chapter are met.

§ 1416.13 Deceased individuals or dissolved entities.

(a) Payments may be made for eligible losses suffered by an eligible participant who is now a deceased individual or is a dissolved entity if a representative, who currently has authority to act on behalf of the estate of the deceased participant, signs the application for payment.

(b) Legal documents showing proof of authority to sign for the deceased individual or dissolved entity must be provided.

(c) If a participant is now a dissolved general partnership or joint venture, all members of the general partnership

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or joint venture at the time of dissolution or their duly authorized representatives must sign the application for payment.

§ 1416.14 Miscellaneous.

(a) As a condition to receive benefits under ELAP, LFP, LIP, or TAP, a participant must have been in compliance with the applicable provisions of parts 12 and 718 of this title and 1400 of this chapter, and must not otherwise be precluded from receiving benefits under those provisions or under any law.

(b) [Reserved]

Subpart B—Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program

§ 1416.101 Applicability.

(a) This subpart establishes the terms and conditions under which the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP) will be administered.

(b) Eligible producers of livestock, honeybees, and farm-raised fish will be compensated for eligible losses due to an eligible adverse weather or eligible loss condition that occurred in the program year for which the producer requests benefits. The eligible loss must have been a direct result of eligible adverse weather or eligible loss conditions as determined by the Deputy Administrator. ELAP does not cover losses that are covered under LFP or LIP.

§ 1416.102 Definitions.

The following definitions apply to this subpart and to the administration of ELAP. The definitions in parts 718 of this title and 1400 of this chapter also apply, except where they conflict with the definitions in this section.

Adult beef bull means a male beef breed bovine animal that was used for breeding purposes that was at least 2 years old before the beginning date of the eligible adverse weather or eligible loss condition.

Adult beef cow means a female beef breed bovine animal that had delivered one or more offspring before the beginning date of the eligible adverse weather

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or eligible loss condition. A first-time bred beef heifer is also considered an adult beef cow if it was pregnant on or by the beginning date of the eligible adverse weather or eligible loss condition.

Adult buffalo and beefalo bull means a male animal of those breeds that was used for breeding purposes and was at least 2 years old before the beginning date of the eligible adverse weather or eligible loss condition.

Adult buffalo and beefalo cow means a female animal of those breeds that had delivered one or more offspring before the beginning date of the eligible adverse weather or eligible loss condition. A first-time bred buffalo or beefalo heifer is also considered an adult buffalo or beefalo cow if it was pregnant by the beginning date of the eligible adverse weather or eligible loss condition.

Adult dairy bull means a male dairy breed bovine animal that was used primarily for breeding dairy cows and was at least 2 years old by the beginning date of the eligible adverse weather or eligible loss condition.

Adult dairy cow means a female bovine dairy breed animal used for the purpose of providing milk for human consumption that had delivered one or more offspring by the beginning date of the eligible adverse weather or eligible loss condition. A first-time bred dairy heifer is also considered an adult dairy cow if it was pregnant by the beginning date of the eligible adverse weather or eligible loss condition.

Agricultural operation means a farming operation.

APHIS means the Animal and Plant Health Inspection Service.

Application means CCC or FSA form used to apply for either the emergency loss assistance for livestock or emergency loss assistance for farm-raised fish or honeybees.

Aquatic species means any species of aquatic organism grown as food for human consumption, fish raised as feed for fish that are consumed by humans, or ornamental fish propagated and reared in an aquatic medium by a commercial operator on private property in water in a controlled environment. Catfish and crawfish are both defined as aquatic species for ELAP. However,

aquatic species do not include reptiles or amphibians.

Bait fish means small fish caught for use as bait to attract large predatory fish. For ELAP, it also must meet the definition of aquatic species and not be raised as food for fish; provided, however, that only bait fish produced in a controlled environment are eligible for payment under ELAP.

Buck means a male goat.

Cattle tick fever means a severe and often fatal disease that destroys red blood cells of cattle, commonly known as Texas or cattle fever, which is spread by *Rhipicephalus* (*Boophilus*) *annulatus*, and the southern cattle tick, *R. (Boophilus) microplus*.

Commercial use means used in the operation of a business activity engaged in as a means of livelihood for profit by the eligible producer.

Contract means, with respect to contracts for the handling of livestock, a written agreement between a livestock owner and another individual or entity setting the specific terms, conditions, and obligations of the parties involved regarding the production of livestock or livestock products.

Deputy Administrator or DAFP means the Deputy Administrator for Farm Programs, Farm Service Agency, U.S. Department of Agriculture or the designee.

Eligible adverse weather means, as determined by the Deputy Administrator, an extreme or abnormal damaging weather event that is not expected to occur during the loss period, which results in eligible losses. The eligible adverse weather would have resulted in agricultural losses not covered by other programs in this part for which the Deputy Administrator determines financial assistance should be provided to producers. Adverse weather may include, but is not limited to, blizzard, winter storms, and wildfires. Specific eligible adverse weather may vary based on the type of loss. Identification of eligible adverse weather will include locations (National, State, or county-level) and start and end dates.

Eligible drought means that any area of the county has been rated by the U.S. Drought Monitor as having a D3 (extreme drought) intensity:

(1) At any time during the program year, for additional honeybee feed loss;

(2) That directly impacts water availability at any time during the normal grazing period (for example, snow pack that feeds streams and springs), as determined by the Deputy Administrator or designee, for losses resulting from transporting water to livestock.

Eligible grazing land means land that is native or improved pastureland with permanent vegetative cover or land planted to a crop planted specifically for the purpose of providing grazing for eligible livestock.

Eligible loss condition means a condition that would have resulted in agricultural losses not covered by other programs in this part for which the Deputy Administrator determines financial assistance needs to be provided to producers. Specific eligible loss conditions include, but are not limited to, disease (including cattle tick fever), insect infestation, and colony collapse disorder. Identification of eligible loss conditions will include locations (National, State, or county-level) and start and end dates.

Eligible winter storm means a storm that lasts for at least three consecutive days and is accompanied by high winds, freezing rain or sleet, heavy snowfall, and extremely cold temperatures.

Equine animal means a domesticated horse, mule, or donkey.

Ewe means a female sheep.

Farming operation means a business enterprise engaged in producing agricultural products.

Farm-raised fish means any aquatic species that is propagated and reared in a controlled environment.

FSA means the Farm Service Agency.

Game or sport fish means fish pursued for sport by recreational anglers; provided, however, that only game or sport fish produced in a controlled environment can generate claims under ELAP.

Goat means a domesticated, ruminant mammal of the genus *Capra*, including Angora goats. Goats are further delineated into categories by sex (bucks and nannies) and age (kids).

Grazing loss means the value, as calculated in §1416.110(g) or (m), of eligible grazing lost due to an eligible adverse weather or eligible loss condition

based on the number of days that the eligible livestock were not able to graze the eligible grazing land during the normal grazing period.

Kid means a goat less than 1 year old.

Lamb means a sheep less than 1 year old.

Livestock owner, for death loss purposes, means one having legal ownership of the livestock for which benefits are being requested on the day such livestock died due to an eligible adverse weather or eligible loss condition. For all other purposes of loss under ELAP, “livestock owner” means one having legal ownership of the livestock for which benefits are being requested during the 60 days prior to the beginning date of the eligible adverse weather or eligible loss condition.

Nanny means a female goat.

Non-adult beef cattle means a beef breed bovine animal that does not meet the definition of adult beef cow or bull. Non-adult beef cattle are further delineated by weight categories of either less than 400 pounds or 400 pounds or more at the time they died. For a loss other than death, means a bovine animal less than 2 years old that weighed 500 pounds or more on or before the beginning date of the eligible adverse weather or eligible loss condition.

Non-adult buffalo or beefalo means an animal of those breeds that does not meet the definition of adult buffalo or beefalo cow or bull. Non-adult buffalo or beefalo are further delineated by weight categories of either less than 400 pounds or 400 pounds or more at the time of death. For a loss other than death, means an animal of those breeds that is less than 2 years old that weighed 500 pounds or more on or before the beginning date of the eligible adverse weather or eligible loss condition.

Non-adult dairy cattle means a bovine dairy breed animal used for the purpose of providing milk for human consumption that does not meet the definition of adult dairy cow or bull. Non-adult dairy cattle are further delineated by weight categories of either less than 400 pounds or 400 pounds or more at the time they died. For a loss other than death, means a bovine dairy breed animal used for the purpose of providing

milk for human consumption that is less than 2 years old that weighed 500 pounds or more on or before the beginning date of the eligible adverse weather or eligible loss condition.

Normal grazing period, with respect to a county, means the normal grazing period during the calendar year with respect to each specific type of grazing land or pastureland in the county.

Normal mortality means the numerical amount, computed by a percentage of expected livestock, honeybee colony and farm-raised fish deaths, by category, that normally occur during a program year for a producer, as established for the area by the FSA State Committee for livestock and farm-raised fish, and as established nationwide by the Deputy Administrator for honeybee colonies.

Poultry means domesticated chickens, turkeys, ducks, and geese. Poultry are further delineated into categories by sex, age, and purpose of production as determined by FSA.

Program year means from October 1 through September 30 of the fiscal year in which the loss occurred.

Ram means a male sheep.

Reliable record means any non-verifiable record available that reasonably supports the eligible loss, as determined acceptable by the COC.

Sheep means a domesticated, ruminant mammal of the genus *Ovis*. Sheep are further defined by sex (rams and ewes) and age (lambs) for purposes of dividing into categories for loss calculations.

Swine means a domesticated omnivorous pig, hog, or boar. Swine for purposes of dividing into categories for loss calculations are further delineated into categories by sex and weight as determined by FSA.

U.S. Drought Monitor is a system for classifying drought severity according to a range of abnormally dry to exceptional drought. It is a collaborative effort between Federal and academic partners, produced on a weekly basis, to synthesize multiple indices, outlooks, and drought impacts on a map and in narrative form. This synthesis of indices is reported by the National Drought Mitigation Center at <http://droughtmonitor.unl.edu>. Should an eligible area not be covered by the U.S.

Drought Monitor, the Deputy Administrator, in consultation with appropriate weather-related agencies and experts, will establish procedures for rating drought intensity using the same range of categories as the U.S. Drought Monitor and use this information in place of the missing data for eligibility purposes.

Verifiable record means a document provided by the producer that can be verified by the County Committee (COC) through an independent source and is used to substantiate the claimed loss.

[79 FR 21097, Apr. 14, 2014, as amended at 79 FR 57721, Sept. 26, 2014; 79 FR 74571, Dec. 15, 2014]

§ 1416.103 Eligible losses, adverse weather, and other loss conditions.

(a) An eligible loss covered under this subpart is a loss that an eligible producer or contract grower of livestock, honeybees, or farm-raised fish incurs due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator.

(b) A loss covered under LFP or LIP is not eligible for ELAP.

(c) To be eligible, the loss must have occurred during the program year for which payment is being requested.

(d) For a livestock feed loss to be considered an eligible loss, the livestock feed loss must be one of the following:

(1) Loss of purchased forage or feedstuffs that was intended for use as feed for the participant's eligible livestock as specified in § 1416.104(a) that was physically located in the county where the eligible adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition. The loss must be due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, blizzard, eligible winter storms, flood, hurricane, lightning, tidal surge, tornado, volcanic eruption, or wildfire on non-Federal land;

(2) Loss of mechanically harvested forage or feedstuffs intended for use as feed for the participant's eligible livestock as specified in § 1416.104(a) that was physically located in the county

where the eligible adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition. The loss must have occurred after harvest due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, blizzard, eligible winter storms, flood, hurricane, lightning, tidal surge, tornado, volcanic eruption, or wildfire on non-Federal land;

(3) A loss resulting from the additional cost of purchasing additional livestock feed, above normal quantities, required to maintain the eligible livestock as specified in § 1416.104(a) during an eligible adverse weather or eligible loss condition, until additional livestock feed becomes available, as determined by the Deputy Administrator. To be eligible, the additional feed purchased above normal quantities must be feed that is fed to maintain livestock in the county where the eligible adverse weather or eligible loss condition occurred. Eligible adverse weather or eligible loss conditions, as determined by the Deputy Administrator, including, but not limited to, blizzard, eligible winter storms, flood, hurricane, lightning, tidal surge, tornado, volcanic eruption, or wildfire on non-Federal land;

(4) A loss resulting from the additional cost incurred for transporting livestock feed to eligible livestock as specified in § 1416.104(a) due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, costs associated with equipment rental fees for hay lifts and snow removal. To be eligible, the loss must be incurred in combination with a loss described in paragraphs (d)(1), (2), or (3) of this section. The additional costs incurred must have been incurred for losses suffered in the county where the eligible adverse weather or eligible loss condition occurred. Eligible adverse weather or eligible loss conditions, as determined by the Deputy Administrator, include, but not limited to, blizzard, eligible winter storms, flood, hurricane, lightning, tidal surge, tornado, volcanic eruption, or wildfire on non-Federal land;

(5) For 2014 and subsequent program years, a loss resulting from the additional cost of transporting water to eligible livestock as specified in §1416.104(a) due to an eligible drought, including, but not limited to, costs associated with water transport equipment rental fees, labor, and contracted water transportation fees. The cost of the water is not eligible for payment. Transporting water to livestock located on land enrolled in CRP is not an eligible loss under this program. To be eligible for additional cost of transporting water to eligible livestock, the livestock must be on eligible grazing lands that meet all of the following:

- (i) Physically located in the county where the eligible adverse weather or eligible loss condition occurred;
- (ii) That had adequate livestock watering systems or facilities before the eligible adverse weather or eligible loss condition occurred; and
- (iii) That the producer is not normally required to transport water to the grazing land.

(e) For a grazing loss to be considered eligible, the grazing loss must have been incurred:

- (1) During the normal grazing period, as specified in §1416.102;
- (2) On eligible grazing land that is physically located in the county where the eligible adverse weather or eligible loss condition occurred;
- (3) Due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, blizzard, eligible winter storm, flood, hurricane, hail, lightning, tidal surge, volcanic eruption, and wildfire on non-Federal land. The grazing loss will not be eligible if it is due to an adverse weather condition covered by LFP as specified in subpart C of this part, such as drought or wildfire on federally managed land where the producer is prohibited by the Federal agency from grazing the normally permitted livestock on the managed rangeland due to a fire.

(f) For a loss resulting from the additional cost associated with gathering livestock to treat for cattle tick fever, the livestock treated for cattle tick fever must be considered eligible livestock as specified in §1416.104(d). To be

considered an eligible loss, acceptable records, as determined by the Deputy Administrator, must be on file with APHIS, that provide the number of livestock treated for cattle tick fever and the number of treatments given during the program year.

(g) For a loss due to livestock death to be considered eligible, the livestock death must have occurred in the county where the eligible loss condition occurred. The livestock death must be in excess of normal mortality and due to an eligible loss condition determined as eligible by the Deputy Administrator and not related to eligible adverse weather, as specified in subpart D of this part for LIP.

(h) For honeybee feed or farm-raised fish feed losses to be considered an eligible loss, the honeybee feed or farm-raised fish feed loss must be one of the following:

(1) Loss of honeybee feed or farm-raised fish feed that was intended as feed for the participant's eligible honeybees or farm-raised fish that was physically located in the county where the eligible adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition. The loss must be due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, earthquake, flood, hurricane, lightning, tidal surge, tornado, volcanic eruption, and wildfire.

(2) A loss resulting from the additional cost of purchasing additional honeybee feed, above normal quantities, required to maintain the honeybees during an eligible adverse weather or eligible loss condition, until additional honeybee feed becomes available, as determined by the Deputy Administrator. To be eligible the additional feed purchased above normal quantities must be feed that is fed to maintain honeybees in the county where the eligible adverse weather or eligible loss condition occurred. The loss must be due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, earthquake, early fall frost, excessive rainfall, flood, hurricane, late spring

frost, lightning, tidal surge, tornado, volcanic eruption, wildfire and eligible drought, as specified in §1416.102.

(i) For honeybee colony or honeybee hive losses to be considered eligible, the hive producer must have incurred the loss in the county where the eligible adverse weather or eligible loss condition occurred. The honeybee colony or hive losses must be due to an eligible adverse weather or eligible loss condition, as determined by the Deputy Administrator, including, but not limited to, colony collapse disorder, earthquake, eligible winter storm, as specified in §1416.102, excessive wind, flood, hurricane, lightning, tornado, volcanic eruption, and wildfire. To be considered an eligible honeybee colony loss, the colony loss must be in excess of normal mortality, as established by the Deputy Administrator, and the loss could not have been prevented through reasonable and available measures. Acceptable documentation must be provided upon request by FSA to demonstrate an eligible loss occurred, was associated with an eligible adverse weather event or loss condition, and that generally accepted husbandry and production practices had been followed.

(j) For death losses of bait fish, game fish, or other aquatic species, as determined by the Deputy Administrator, to be considered eligible, the producer must have incurred the fish loss, in excess of normal mortality, in the county where the eligible adverse weather or eligible loss condition occurred. The fish death must be due to an eligible adverse weather or eligible loss condition as determined by the Deputy Administrator including, but not limited to, earthquake, flood, hurricane, tidal surge, tornado, and volcanic eruption.

§ 1416.104 Eligible livestock, honeybees, and farm-raised fish.

(a) To be considered eligible livestock for livestock grazing and feed, losses resulting from transporting water, and gathering livestock to treat for cattle tick fever, livestock must meet all the following conditions:

(1) Be alpacas, adult or non-adult dairy cattle, adult or non-adult beef cattle, adult or non-adult buffalo, adult or non-adult beefalo, deer, elk, emus,

equine, goats, llamas, poultry, reindeer, sheep, or swine;

(2) Except for livestock losses resulting from gathering livestock to treat cattle tick fever, be livestock that would normally have been grazing the eligible grazing land or pastureland during the normal grazing period for the specific type of grazing land or pastureland for the county where the eligible adverse weather or eligible loss condition occurred;

(3) Be livestock that is owned, cash-leased, purchased, under contract for purchase, or been raised by a contract grower or an eligible livestock producer, during the 60 days prior to the beginning date of the eligible adverse weather or eligible loss condition;

(4) Be livestock that has been maintained for commercial use as part of the producer's farming operation on the beginning date of the eligible adverse weather or eligible loss condition;

(5) Be livestock that has not been produced and maintained for reasons other than commercial use as part of a farming operation; and

(6) Be livestock that was not in a feedlot, on the beginning date of the eligible adverse weather or eligible loss condition, as a part of the normal business operation of the producer, as determined by the Deputy Administrator.

(b) The eligible livestock types for grazing and feed losses, losses resulting from transporting water and gathering livestock to treat for cattle tick fever, are:

- (1) Adult beef cows or bulls,
- (2) Adult buffalo or beefalo cows or bulls,
- (3) Adult dairy cows or bulls,
- (4) Alpacas,
- (5) Deer,
- (6) Elk,
- (7) Emus,
- (8) Equine,
- (9) Goats,
- (10) Llamas,
- (11) Non-adult beef cattle,
- (12) Non-adult buffalo or beefalo,
- (13) Non-adult dairy cattle,
- (14) Poultry,
- (15) Reindeer,
- (16) Sheep, and
- (17) Swine.

(c) Ineligible livestock for grazing and feed losses, and losses resulting from transporting water, include, but are not limited to:

(1) Livestock that were or would have been in a feedlot, on the beginning date of the eligible adverse weather or eligible loss condition, as a part of the normal business operation of the producer, as determined by FSA;

(2) Yaks;

(3) Ostriches;

(4) All beef and dairy cattle, and buffalo and beefalo that weighed less than 500 pounds on the beginning date of the eligible adverse weather or eligible loss condition;

(5) Any wild free roaming livestock, including horses and deer; and

(6) Livestock produced or maintained for reasons other than commercial use as part of a farming operation, including, but not limited to, livestock produced or maintained exclusively for recreational purposes, such as:

(i) Roping,

(ii) Hunting,

(iii) Show,

(iv) Pleasure,

(v) Use as pets, or

(vi) Consumption by owner.

(d) For death losses for livestock owners to be eligible, the livestock must meet all of the following conditions:

(1) Be alpacas, adult or non-adult dairy cattle, beef cattle, beefalo, buffalo, deer, elk, emus, equine, goats, llamas, poultry, reindeer, sheep, or swine, and meet all the conditions in paragraph (f) of this section.

(2) Be one of the following categories of animals for which calculations of eligibility for payments will be calculated separately for each producer with respect to each category:

(i) Adult beef bulls;

(ii) Adult beef cows;

(iii) Adult buffalo or beefalo bulls;

(iv) Adult buffalo or beefalo cows;

(v) Adult dairy bulls;

(vi) Adult dairy cows;

(vii) Alpacas;

(viii) Chickens, broilers, pullets;

(ix) Chickens, chicks;

(x) Chickens, layers, roasters;

(xi) Deer;

(xii) Ducks;

(xiii) Ducks, ducklings;

(xiv) Elk;

(xv) Emus;

(xvi) Equine;

(xvii) Geese, goose;

(xviii) Geese, gosling;

(xix) Goats, bucks;

(xx) Goats, nannies;

(xxi) Goats, kids;

(xxii) Llamas;

(xxiii) Non-adult beef cattle;

(xxiv) Non-adult buffalo or beefalo;

(xxv) Non-adult dairy cattle;

(xxvi) Reindeer;

(xxvii) Sheep, ewes;

(xxviii) Sheep, lambs;

(xxix) Sheep, rams;

(xxx) Swine, feeder pigs under 50 pounds;

(xxxi) Swine, sows, boars, barrows, gilts 50 to 150 pounds;

(xxxii) Swine, sows, boars, barrows, gilts over 150 pounds;

(xxxiii) Turkeys, poults; and

(xxxiv) Turkeys, toms, fryers, and roasters.

(e) Under ELAP, “contract growers” will only be deemed to include producers of livestock, other than feedlots, whose income is dependent on the actual weight gain and survival of the livestock. For death losses for contract growers to be eligible, the livestock must meet all of the following conditions:

(1) Be poultry or swine and meet all the conditions in paragraph (f) of this section.

(2) Be one of the following categories of animals for which calculations of eligibility for payments will be calculated separately for each contract grower with respect to each category:

(i) Chickens, broilers, pullets;

(ii) Chickens, layers, roasters;

(iii) Geese, goose;

(iv) Swine, boars, sows;

(v) Swine, feeder pigs;

(vi) Swine, lightweight barrows, gilts;

(vii) Swine, sows, boars, barrows, gilts; and

(viii) Turkeys, toms, fryers, and roasters.

(f) For livestock death losses to be considered eligible livestock for the purpose of generating payments under this subpart, livestock must meet all of the following conditions:

(1) They must have died:

(i) On or after the beginning date of the eligible loss condition; and

(ii) On or after October 1, 2011, and no later than 60 calendar days from the ending date of the eligible loss condition; and

(iii) As a direct result of an eligible loss condition that occurs on or after October 1, 2011, and

(iv) In the program year for which payment is being requested; and

(2) Been maintained for commercial use as part of a farming operation on the day the livestock died; and

(3) Before dying, not have been produced or maintained for reasons other than commercial use as part of a farming operation, such non-eligible uses being understood to include, but not be limited to, any uses of wild free roaming animals or use of the animals for recreational purposes, such as pleasure, hunting, roping, pets, or for show.

(g) For honeybee colony, hive, and feed losses to be eligible, the honeybee colony must meet the following conditions:

(1) Been maintained for the purpose of producing honey or pollination for commercial use in a farming operation on the beginning date of the eligible adverse weather or eligible loss condition;

(2) Been physically located in the county where the eligible adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition;

(3) Been a honeybee colony in which the participant has a risk in the honey production or pollination farming operation on the beginning date of the eligible adverse weather or eligible loss condition;

(4) Been a honeybee colony for which the producer had an eligible loss of a honeybee colony, honeybee hive, or honeybee feed; the feed must have been intended as feed for honeybees.

(h) For fish to be eligible to generate payments under ELAP, the fish must be produced in a controlled environment and the farm-raised fish must:

(1) For feed losses:

(i) Be an aquatic species that is propagated and reared in a controlled environment;

(ii) Be maintained and harvested for commercial use as part of a farming operation; and

(iii) Be physically located in the county where the eligible adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition.

(2) For death losses:

(i) Be bait fish, game fish, or another aquatic species deemed eligible by the Deputy Administrator that are propagated and reared in a controlled environment;

(ii) Been maintained for commercial use as part of a farming operation; and

(iii) Been physically located in the county where the eligible loss adverse weather or eligible loss condition occurred on the beginning date of the eligible adverse weather or eligible loss condition.

§ 1416.105 Eligible producers, owners, and contract growers.

(a) To be considered an eligible livestock producer for feed losses and losses resulting from transporting water and gathering livestock to treat for cattle tick fever and to receive payments, the participant must have:

(1) Owned, cash-leased, purchased, entered into a contract to purchase, or been a contract grower of eligible livestock during the 60 days prior to the beginning date of the eligible adverse weather or eligible loss condition; and

(2) Had a loss that is determined to be eligible as specified in § 1416.103(d) or (f).

(b) To be considered an eligible livestock producer for grazing losses and to receive payments, the participant must have:

(1) Owned, cash-leased, purchased, entered into a contract to purchase, or been a contract grower of eligible livestock during the 60 days prior to the beginning date of the eligible adverse weather or eligible loss condition;

(2) Had a loss that is determined to be eligible as specified in § 1416.103(e);

(3) Had eligible livestock that would normally have been grazing the eligible grazing land or pastureland during the normal grazing period for the specific type of grazing land or pastureland for the county;

(4) Provided for the eligible livestock pastureland or grazing land, including cash leased pastureland or grazing land for eligible livestock that is physically located in the county where the eligible adverse weather or loss condition occurred during the normal grazing period for the county.

(c) For livestock death losses to be eligible the producer must have had a loss that is determined to be eligible as specified in §1416.103(g) and in addition to other eligibility rules that may apply to be eligible as a:

(1) Livestock owner for the payment with respect to the death of an animal under this subpart, the applicant must have had legal ownership of the livestock on the day the livestock died and under conditions in which no contract grower could have been eligible for ELAP payment with respect to the animal. Eligible types of animal categories for which losses can be calculated for an owner are specified in §1416.104(d).

(2) Contract grower for ELAP payment with respect to the death of an animal, the animal must be in one of the categories specified in §1416.104(e), and the contract grower must have had:

(i) A written agreement with the owner of eligible livestock setting the specific terms, conditions, and obligations of the parties involved regarding the production of livestock;

(ii) Control of the eligible livestock on the day the livestock died; and

(iii) A risk of loss in the animal.

(d) To be considered an eligible honeybee producer, a participant must have an interest and risk in an eligible honeybee colony, as specified in §1416.104(g), for the purpose of producing honey or pollination for commercial use as part of a farming operation and must have had a loss that is determined to be eligible as specified in §1416.103(h) or (i).

(e) To be considered an eligible farm-raised fish producer for feed and death loss purposes, the participant must have produced eligible farm-raised fish, as specified in §1416.104(h), with the intent to harvest for commercial use as part of a farming operation and must have had a loss that is determined to

be eligible as specified in §1416.103(h) or (j);

(f) A producer seeking payments must not be ineligible under the restrictions applicable to foreign persons contained in §1416.3(b) and must meet all other requirements of subpart A of this part and other applicable USDA regulations.

§1416.106 Notice of loss and application process.

(a) To apply for ELAP, the participant that suffered eligible livestock, honeybee, or farm-raised fish losses must submit, to the FSA administrative county office that maintains the participant's farm records for the agricultural operation, the following:

(1) A notice of loss to FSA as specified in §1416.107(a),

(2) A completed application as specified in §1416.107(b) for one or both of the following:

(i) For livestock feed, grazing, and death losses and losses resulting from transporting water and gathering livestock to treat for cattle tick fever, a completed Emergency Loss Assistance for Livestock Application;

(ii) For honeybee feed, honeybee colony, honeybee hive, or farm-raised fish feed or death losses, a completed Emergency Loss Assistance for Honeybees or Farm-Raised Fish Application;

(3) A report of acreage, if applicable, as determined by the Deputy Administrator;

(4) A copy of the participant's grower contract, if the participant is a contract grower;

(5) Other supporting documents required for FSA to determine eligibility of the participant, livestock, honeybee colonies, hives, farm-raised fish, and loss;

(6) A farm operating plan, if a current farm operating plan is not already on file in the FSA county office; and

(7) A socially disadvantaged, limited resource and beginning farmer or rancher certification, if applicable.

(b) For 2014 and previous program years, available reliable or verifiable records must be provided only upon request by FSA. For 2015 and subsequent program years, for livestock grazing

losses, participant must provide acceptable, verifiable, or reliable records that:

(1) Additional livestock feed was fed to sustain eligible livestock during an eligible adverse weather or loss condition, or

(2) Eligible livestock were removed from the eligible grazing land where the grazing loss occurred.

(c) For livestock, honeybee, or farm-raised fish feed losses, participant must provide acceptable, verifiable, or reliable records of the following as determined by the COC:

(1) Purchased feed intended as feed for livestock, honeybees, or farm-raised fish that was lost, or additional feed purchased above normal quantities to sustain livestock, honeybees, and farm-raised fish for a period of time, not to exceed 150 days, until additional feed becomes available, due to an eligible adverse weather or eligible loss condition. Verifiable or reliable records may include, but are not limited to, feed receipts, invoices, settlement sheets, warehouse ledger sheets, load summaries, register tapes, and contemporaneous records.

(2) Harvested feed intended as feed for livestock, honeybees, or farm-raised fish that was lost due to an eligible adverse weather or eligible loss condition. Verifiable or reliable records may include, but are not limited to, weight tickets, truck scale tickets, pick records, contemporaneous records used to verify that the crop was stored with the intent to feed the crop to livestock, honeybees, or farm-raised fish, and custom harvest documents that clearly identify the amount of feed produced from the applicable acreage.

(3) A loss resulting from the additional cost incurred for transporting livestock feed to eligible livestock due to an eligible adverse weather or eligible loss condition as determined by the Deputy Administrator, including, but not limited to, costs associated with equipment rental fees for hay lifts and snow removal. Verifiable or reliable records may include, but are not limited to, invoices, commercial receipts, load summaries, and contemporaneous records used to verify transportation cost of additional livestock feed.

(4) Additional cost of transporting water to eligible livestock due to an eligible adverse weather or eligible loss condition as determined by the Deputy Administrator, including, but not limited to, costs associated with water transport equipment rental fees, labor, and contracted water transportation fees. Verifiable or reliable records include, but are not limited to, commercial receipts, contemporaneous records and invoices. Records must clearly indicate the dates on which water was transported and the total gallons transported.

(d) For eligible honeybee colony, honeybee hive and farm-raised fish losses, the participant must provide verifiable or reliable records of honeybee colony, hive, or farm-raised fish losses. For honeybee colony and hive losses, the participant must also provide verifiable or reliable records of inventory at the beginning of the program year, and records of purchase and sale transactions of honeybee colonies and hives throughout the program year. For farm-raised fish losses, the participant must also provide verifiable or reliable records of inventory on the beginning date and ending date of the eligible adverse weather or eligible loss condition. Verifiable and reliable records may include, but are not limited to, any combination of the following:

- (1) A report of acreage,
- (2) Loan records,
- (3) Private insurance documents,
- (4) Property tax records,
- (5) Sales and purchase receipts,
- (6) State colony registration documentation, and
- (7) Chattel inspections.

(e) For eligible livestock death losses that occur during the 2015 and subsequent program years, the participant must provide proof of livestock death, current physical location of livestock in inventory, and physical location of claimed livestock at the time of death, according to the documentation requirements for the Livestock Indemnity Program in §1416.305(d) through (f).

(f) For eligible livestock death losses that occur during the 2012, 2013, and 2014 program years, the participant

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must provide proof of death and livestock inventory, according to the documentation requirements for the Livestock Indemnity Program in §1416.305 (h).

(g) If verifiable or reliable records are not available or provided, as required in paragraphs (b) through (d) of this section, the COC may accept producer's certification of losses if similar producers have comparable losses, as determined by the COC and approved by the STC (FSA State Committee).

§ 1416.107 Notice of loss and application period.

(a) In addition to submitting an application for payment at the appropriate time, the participant that suffered eligible livestock, honeybee, or farm-raised fish losses that create or could create a claim for benefits must:

(1) For losses in program years 2012 and 2013, provide a separate notice of loss for each program year to FSA no later than August 1, 2014,

(2) For losses that occur in program year 2014, provide a notice of loss to FSA no later than November 1, 2014,

(3) For losses that occur in program year 2015 and subsequent years, the participant must provide a notice of loss to FSA within the earlier of:

(i) 30 calendar days of when the loss is apparent to the participant; or

(ii) November 1 following the program year for which benefits are being requested.

(4) Submit the notice of loss required in paragraph (a) of this section to the administrative FSA county office, unless additional options are otherwise provided for by the Deputy Administrator.

(b) In addition to the notices of loss required in paragraph (a) of this section, a participant must also submit a completed application for payment no later than:

(1) For the 2012 and 2013 program years, August 1, 2014, or

(2) For 2014 and subsequent program years, November 1 following the program year for which benefits are being requested.

§ 1416.108 Availability of funds.

Not more than \$20 million for fiscal year 2012 and each succeeding fiscal

year will be approved for this program by the Secretary. Within that cap, the only funds that will be considered available to pay eligible losses will be that amount approved by the Secretary. Payments will not be made for claims arising out of a particular program year until, for all claims for that program year, the time for applying for a payment has passed. In the event that, within the limits of the funding made available by the Secretary within the statutory cap, approval of eligible applications would result in expenditures in excess of the amount available, FSA will prorate the available funds by a national factor to reduce the total expected payments to the amount made available by the Secretary. FSA will make payments based on the factor for the national rate determined by FSA. FSA will prorate the payments in such manner as it determines appropriate and reasonable. Claims that are unpaid or prorated for a program year for any reason will not be carried forward for payment under other funds for later years or otherwise, but will be considered, as to any unpaid amount, void and nonpayable.

§ 1416.109 National Payment Rate.

(a) For an eligible livestock, honeybee, or farm-raised fish producer that meets the definition of beginning farmer or rancher, socially disadvantaged farmer or rancher, or limited resource farmer or rancher, payments calculated in §§1416.110 through 1416.112 will be based on a national payment rate of 90 percent.

(b) For an eligible livestock, honeybee, or farm-raised fish producer, payments calculated in §§1416.110(a), (b), (f), (g) and (l), 1416.111(a), and 1416.112(a), will be based on a national payment rate, to be determined by the Deputy Administrator, of not less than 60 percent and not more than 80 percent of the calculated payment.

(c) For an eligible livestock, honeybee, or farm-raised fish producer, payments calculated in §§1416.110(n), 1416.111(b) and (c), and 1416.112(b), will be based on a national payment rate, to be determined by the Deputy Administrator, of not less than 75 percent and not more than 80 percent of the calculated payment.

§ 1416.110 Livestock payment calculations.

(a) Livestock feed payments for an eligible livestock producer will be calculated based on losses for no more than 150 days during the program year. Payment calculations for feed losses will be based on a national payment rate, as specified in § 1416.109, multiplied by the producer's actual cost for:

(1) Livestock feed that was purchased forage or feedstuffs intended for use as feed for the participant's eligible livestock that was physically damaged or destroyed due to the direct result of an eligible adverse weather or eligible loss condition, as specified in § 1416.103(d)(1);

(2) Livestock feed that was mechanically harvested forage or feedstuffs intended for use as feed for the participant's eligible livestock that was physically damaged or destroyed after harvest due to the direct result of an eligible adverse weather or eligible loss condition, as specified in § 1416.103(d)(2);

(3) The additional cost of purchasing additional livestock feed above normal quantities, required to maintain the eligible livestock during an eligible adverse weather or eligible loss condition until additional livestock feed becomes available, as specified in § 1416.103(d)(3); and

(4) The additional cost incurred for transporting livestock feed to eligible livestock due to an eligible adverse weather or eligible loss condition, as specified in § 1416.103(d)(4);

(b) Payments for losses resulting from the additional cost of transporting water to eligible livestock due to an eligible drought for no more 150 days during the program year, as specified in § 1416.103(d)(5) calculated based on a national payment rate, as determined in § 1416.109, multiplied by the lesser of either:

(1) The total value of the cost to transport water to eligible livestock for 150 days, based on the daily water requirements for the eligible livestock, or

(2) The total value of the cost to transport water to eligible livestock for the program year, based on the actual number of gallons of water the eligible producer transported to eligible livestock for the program year.

(c) The total value of the cost to transport water to eligible livestock for 150 days to be used in the calculation for paragraph (b)(1) of this section is equal to the product obtained by multiplying:

(1) The number of eligible livestock converted to an animal unit basis;

(2) The gallons of water required per animal unit for maintenance for one day, as determined by the Deputy Administrator;

(3) The national average price per gallon to transport water and any appropriate regional or local adjustments as recommended by the STC and determined by the Deputy Administrator; and

(4) 150 days.

(d) The total value of the cost to transport water to eligible livestock for the program year to be used in the calculation for paragraph (b)(2) of this section is equal to the product obtained by multiplying:

(1) Actual number of gallons of water transported by the eligible producer to eligible livestock in the program year; and

(2) The national average price per gallon to transport water and any appropriate regional or local adjustments as recommended by the STC and determined by the Deputy Administrator.

(e) The national average price per gallon to transport water to be used in the calculation for paragraphs (c)(3) and (d)(2) of this section is \$0.04, or such other price determined by the Deputy Administrator.

(f) Payments for an eligible livestock producer, for livestock losses resulting from the additional cost associated with gathering livestock to treat for cattle tick fever will be calculated for the actual number of livestock involved in each treatment. Total payments are equal to the sum of the following for each treatment:

(1) The national payment rate, as determined in § 1416.109, times

(2) The number of eligible livestock treated by APHIS for cattle tick fever, times

(3) The average cost to gather livestock, per head, as established by the Deputy Administrator.

(g) Payments for an eligible livestock producer for grazing losses, except for

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losses due to wildfires on non-Federal land, will be calculated based on the applicable national payment rate, as determined in §1416.109, multiplied by the lesser of:

(1) The total value of the feed cost for all covered livestock owned by the eligible livestock producer based on the number of days grazing was lost, not to exceed 150 days of daily feed cost for all eligible livestock, or

(2) The total value of grazing lost for all eligible livestock based on the normal carrying capacity, as determined by the Secretary, of the eligible grazing land of the eligible livestock producer for the number of grazing days lost, not to exceed 150 days of lost grazing.

(h) The total value of feed cost to be used in the calculation for paragraph (g)(1) of this section is based on the number of days grazing was lost and equals the product obtained by multiplying:

(1) A payment quantity equal to the feed grain equivalent, as determined in paragraph (i) of this section;

(2) A payment rate equal to the corn price per pound, as determined in paragraph (j) of this section;

(3) The number of all eligible livestock owned by the eligible producer converted to an animal unit basis;

(4) The number of days grazing was lost, not to exceed 150 calendar days during the normal grazing period for the specific type of grazing land; and

(5) The producer's ownership share in the livestock.

(i) The feed grain equivalent to be used in the calculation for paragraph (g)(1) of this section equals, in the case of:

(1) An adult beef cow, 15.7 pounds of corn per day, or

(2) Any other type or weight of livestock, an amount determined by the Secretary that represents the average number of pounds of corn per day necessary to feed that specific type of livestock.

(j) The corn price per pound to be used in the calculation for paragraph (h)(2) of this section equals the quotient calculated as follows:

(1) The higher of:

(i) The national average corn price per bushel of corn for the 12-month pe-

riod immediately preceding March 1 of the program year for which payments are calculated; or

(ii) The national average corn price per bushel of corn for the 24-month period immediately preceding March 1 of the program year for which payments are calculated;

(2) Divided by 56.

(k) The total value of grazing lost to be used in the calculation for paragraph (h)(2) of this section equals the product obtained by multiplying:

(1) A payment quantity equal to the feed grain equivalent of 15.7 pounds of corn per day;

(2) A payment rate equal to the corn price per pound, as determined in paragraph (j) of this section;

(3) The number of animal units the eligible livestock producer's grazing land or pastureland can sustain during the normal grazing period in the county for the specific type of grazing land or pastureland, in the absence of an eligible adverse weather or eligible loss condition, determined by dividing the:

(i) Number of eligible grazing land or pastureland acres of the specific type of grazing land or pastureland, by

(ii) The normal carrying capacity of the specific type of eligible grazing land or pastureland; and

(4) The number of days grazing was lost, not to exceed 150 calendar days during the normal grazing period for the specific type of grazing land.

(l) Payments for an eligible livestock producer for grazing losses due to a wildfire on non-Federal land will be calculated based on the applicable national payment rate, as determined in §1416.109, multiplied by:

(1) The result of dividing:

(i) The number of acres of grazing land or pastureland acres affected by the fire, by

(ii) The normal carrying capacity of the specific type of eligible grazing land or pastureland; times

(2) The daily value of grazing as calculated by FSA under this section; times

(3) The number of days grazing was lost due to fire, not to exceed 180 calendar days;

(m) If a participant, during the normal grazing period for the eligible grazing land, claims both an eligible

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loss resulting from the additional cost of purchasing additional livestock feed above normal quantities, as calculated in paragraph (a)(3) of this section, and an eligible grazing loss, as calculated in paragraphs (g) or (l) of this section, then the participant may receive no more than the larger of the value of the loss resulting from the:

(1) Additional cost of purchasing additional livestock feed, as calculated in paragraph (a)(3) of this section; or

(2) Grazing loss, as determined in:

(i) Paragraph (g) of this section, for losses due to an eligible adverse weather or eligible loss condition, except wildfires on non-Federal lands, or

(ii) Paragraph (l) of this section, for losses due to wildfires on non-Federal lands.

(n) Payments for an eligible livestock producer for eligible livestock death losses will be based on the applicable national payment rate, as determined in §1416.109, multiplied by the result in paragraph (n)(1) of this section.

(1) Payments will be calculated by multiplying:

(i) The livestock payment rate for each livestock category, times

(ii) The number of eligible livestock that died in each category as a result of an eligible loss condition in excess of normal mortality, as determined in paragraph (n)(2) of this section;

(2) Normal mortality for each livestock category as determined by FSA on a statewide basis using local data sources including, but not limited to, State livestock organizations and the Cooperative Extension Service for the State.

(3) The livestock payment rates to be used in the calculation for paragraph (n)(1) of this section for eligible livestock owners and eligible livestock contract growers are:

(i) A livestock payment rate for eligible livestock owners that is based on the average fair market value of the applicable livestock as computed using nationwide prices for the previous program year unless some other price is approved by the Deputy Administrator.

(ii) A livestock payment rate for eligible livestock contract growers that is based on the relevant average income

loss sustained by the contract grower, with respect to the dead livestock.

(o) Payments calculated in this section are subject to the adjustments and limits provided for in this part.

§ 1416.111 Honeybee payment calculations.

(a) An eligible honeybee producer may receive payments for eligible honeybee feed losses, as specified in §1416.103(h), based on a national payment rate, as determined in §1416.109, multiplied by the producer's actual cost for honeybee feed that was:

(1) Damaged or destroyed due to an eligible adverse weather or eligible loss condition, as specified in §1416.103(h)(1); and

(2) Purchased, above normal, to maintain the honeybees during an eligible adverse weather or eligible loss condition until additional honeybee feed becomes available, as specified in §1416.103(h)(2);

(b) An eligible honeybee producer may receive payments for eligible honeybee colony losses, as specified in §1416.103(i), based on a national payment rate, as determined in §1416.109(b), multiplied by:

(1) Average fair market value of the honeybee colonies as computed using nationwide prices unless some other price data is approved for use by the Deputy Administrator; and

(2) Number of eligible honeybee colonies that were damaged or destroyed due to an eligible adverse weather or eligible loss condition, in excess of normal honeybee mortality, as determined by the Deputy Administrator.

(c) An eligible honeybee producer may receive payments for eligible honeybee hive losses, as specified in §1416.103(i), based on a national payment rate, as determined in §1416.109, multiplied by:

(1) Average fair market value for honeybee hives as computed using nationwide prices unless some other price data is approved for use by the Deputy Administrator; and

(2) Number of honeybee hives that were damaged or destroyed due to an eligible adverse weather or eligible loss condition.

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(d) Payments calculated in this section are subject to the adjustments and limits provided for in this part.

§ 1416.112 Farm-raised fish payment calculations.

(a) An eligible farm-raised fish producer may receive payments for fish feed losses due to an eligible adverse weather or eligible loss condition, as specified in § 1416.103(h), based on a national payment rate, as determined in § 1416.109, multiplied by the producer's actual cost for the fish feed that was:

(1) Damaged or destroyed due to an eligible adverse weather or eligible loss condition, as specified in § 1416.103(h)(1); and

(2) Purchased, above normal, to maintain the farm-raised fish during an eligible adverse weather or eligible loss condition until additional farm-raised fish feed becomes available, as specified in § 1416.103(h)(2).

(b) An eligible producer of farm-raised fish may receive payments for death losses of farm-raised fish due to an eligible adverse weather or eligible loss condition, as specified in § 1416.103(j), based on a national payment rate, as determined in § 1416.109, multiplied by:

(1) Average fair market value of the bait fish, game fish, or other aquatic species, as determined by the Deputy Administrator, that died as a direct result of an eligible adverse weather or eligible loss condition, as computed using nationwide prices unless some other price data is approved for use by the Deputy Administrator; and

(2) Number of eligible bait fish, game fish, or other aquatic species, as determined by the Deputy Administrator, that died as a result of an eligible adverse weather or loss condition, in excess of normal mortality, as determined by the Deputy Administrator.

(c) Payments calculated in this section or elsewhere with respect to ELAP are subject to the adjustments and limits provided for in this part and are also subject to the payment limitations and average adjusted gross income limitations that are contained in part 1400 of this chapter.

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Subpart C—Livestock Forage Disaster Program

§ 1416.201 Applicability.

(a) This subpart establishes the terms and conditions under which the Livestock Forage Disaster Program (LFP) will be administered.

(b) Eligible livestock producers will be compensated for eligible grazing losses for covered livestock that occur due to a qualifying drought or fire that occurs:

(1) On or after October 1, 2011, and

(2) In the calendar year for which benefits are being requested.

§ 1416.202 Definitions.

The following definitions apply to this subpart and to the administration of LFP. The definitions in parts 718 of this title and 1400 of this chapter also apply, except where they conflict with the definitions in this section.

Adult beef bull means a male beef breed bovine animal that was at least 2 years old and used for breeding purposes on or before the beginning date of a qualifying drought or fire.

Adult beef cow means a female beef breed bovine animal that had delivered one or more offspring. A first-time bred beef heifer is also considered an adult beef cow if it was pregnant on or before the beginning date of a qualifying drought or fire.

Adult buffalo and beefalo bull means a male animal of those breeds that was at least 2 years old and used for breeding purposes on or before the beginning date of a qualifying drought or fire.

Adult buffalo and beefalo cow means a female animal of those breeds that had delivered one or more offspring. A first-time bred buffalo or beefalo heifer is also considered an adult buffalo or beefalo cow if it was pregnant on or before the beginning date of a qualifying drought or fire.

Adult dairy bull means a male dairy breed bovine animal at least 2 years old used primarily for breeding dairy cows on or before the beginning date of a qualifying drought or fire.

Adult dairy cow means a female dairy breed bovine animal used for the purpose of providing milk for human consumption that had delivered one or more offspring. A first-time bred dairy

heifer is also considered an adult dairy cow if it was pregnant on or before the beginning date of a qualifying drought or fire.

Agricultural operation means a farming operation.

Application means the “Livestock Forage Disaster Program” form.

Commercial use means used in the operation of a business activity engaged in as a means of livelihood for profit by the eligible livestock producer.

Contract means, with respect to contracts for the handling of livestock, a written agreement between a livestock owner and another individual or entity setting the specific terms, conditions, and obligations of the parties involved regarding the production of livestock or livestock products.

Covered livestock means livestock of an eligible livestock producer that, during the 60 days prior to the beginning date of a qualifying drought or fire, the eligible livestock producer owned, leased, purchased, entered into a contract to purchase, was a contract grower of, or sold or otherwise disposed of due to a qualifying drought during the current production year. It includes livestock that the producer otherwise disposed of due to drought in one or both of the two production years immediately preceding the current production year as determined by the Secretary. Notwithstanding the foregoing portions of this definition, covered livestock for “contract growers” will not include livestock in feedlots. “Contract growers” under LFP will only include producers of livestock not in feedlots whose income is dependent on the actual weight gain and survival of the livestock.

Equine animal means a domesticated horse, mule, or donkey.

Farming operation means a business enterprise engaged in producing agricultural products.

Federal Agency means, with respect to the control of grazing land, an agency of the federal government that manages rangeland on which livestock is generally permitted to graze. For the purposes of this section, it includes, but is not limited to, the U.S. Department of the Interior (DOI) Bureau of Indian Affairs (BIA), DOI Bureau of

Land Management (BLM), and USDA Forest Service (FS).

Goat means a domesticated, ruminant mammal of the genus *Capra*, including Angora goats.

Non-adult beef cattle means a beef breed bovine animal that weighed 500 pounds or more on or before the beginning date of a qualifying drought or fire but that does not meet the definition of adult beef cow or bull.

Non-adult buffalo or beefalo means an animal of those breeds that weighed 500 pounds or more on or before the beginning date of a qualifying drought or fire, but does not meet the definition of adult buffalo or beefalo cow or bull.

Non-adult dairy cattle means a bovine animal, of a breed used for the purpose of providing milk for human consumption, that weighed 500 pounds or more on or before the beginning date of a qualifying drought or fire, but that does not meet the definition of adult dairy cow or bull.

Normal carrying capacity means, with respect to each type of grazing land or pastureland in a county, the normal carrying capacity that would be expected from the grazing land or pastureland for livestock during the normal grazing period in the county, in the absence of a drought or fire that diminishes the production of the grazing land or pastureland.

Normal grazing period means, with respect to a county, the normal grazing period during the calendar year with respect to each specific type of grazing land or pastureland in the county served by the applicable county committee.

Owner means one who had legal ownership of the livestock for which benefits are being requested during the 60 days prior to the beginning of a qualifying drought or fire.

Poultry means a domesticated chicken, turkey, duck, or goose. Poultry are further delineated by sex, age, and purpose of production, as determined by FSA.

Sheep means a domesticated, ruminant mammal of the genus *Ovis*.

Swine means a domesticated omnivorous pig, hog, or boar.

U.S. Drought Monitor is a system for classifying drought severity according

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to a range of abnormally dry to exceptional drought. It is a collaborative effort between Federal and academic partners, produced on a weekly basis, to synthesize multiple indices, outlooks, and drought impacts on a map and in narrative form. This synthesis of indices is reported by the National Drought Mitigation Center at <http://droughtmonitor.unl.edu>.

§ 1416.203 Eligible livestock producer.

(a) To be considered an eligible livestock producer, the eligible producer on a farm must:

(1) During the 60 days prior to the beginning date of a qualifying drought or fire, own, cash or share lease, or be a contract grower of covered livestock.

(2) Provide pastureland or grazing land for covered livestock, including cash-leased pastureland or grazing land, that is:

(i) Physically located in a county affected by a qualifying drought during the normal grazing period for the county, or

(ii) Rangeland managed by a Federal agency for which the otherwise eligible livestock producer is prohibited by the Federal agency from grazing the normal permitted livestock due to a qualifying fire.

(b) The eligible livestock producer must have certified that the livestock producer has suffered a grazing loss due to a qualifying drought or fire to be eligible for LFP payments.

(c) An eligible livestock producer does not include any owner, cash or share lessee, or contract grower of livestock that rents or leases pastureland or grazing land owned by another person on a rate-of-gain basis. (That is, where the lease or rental agreement calls for payment based in whole or in part on the amount of weight gained by the animals that use the pastureland or grazing land.)

(d) A producer seeking payment must not be prohibited from receiving these benefits as a result of the restrictions applicable to foreign persons contained in §1416.3(b) and must meet all other requirements of subpart A of this part and other applicable USDA regulations.

(e) If a contract grower is an eligible livestock producer for covered live-

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stock, the owner of that livestock is not eligible for payment.

§ 1416.204 Covered livestock.

(a) To be considered covered livestock for LFP payments, livestock must meet all the following conditions:

(1) Be adult or non-adult beef cattle, adult or non-adult beefalo, adult or non-adult buffalo, adult or non-adult dairy cattle, alpacas, deer, elk, emus, equine, goats, llamas, poultry, reindeer, sheep, or swine;

(2) Be livestock that would normally have been grazing the eligible grazing land or pastureland:

(i) During the normal grazing period for the specific type of grazing land or pastureland for the county during the qualifying drought; or

(ii) When the Federal agency prohibited the eligible livestock producer from using the managed rangeland for grazing due to a fire;

(3) Be livestock that the eligible livestock producer:

(i) During the 60 days prior to the beginning date of a qualifying drought or fire:

(A) Owned,

(B) Leased,

(C) Purchased,

(D) Entered into a contract to purchase, or

(E) Was a contract grower of; or

(ii) Sold or otherwise disposed of due to qualifying drought during:

(A) The current production year, or

(B) 1 or both of the 2 production years immediately preceding the current production year;

(4) Been maintained for commercial use as part of the producer's farming operation on the beginning date of the qualifying drought or fire;

(5) Not have been produced and maintained for reasons other than commercial use as part of a farming operation. Such excluded uses include, but are not limited to, any uses of wild free roaming animals or use of the animals for recreational purposes, such as pleasure, roping, hunting, pets, or for show; and

(6) Not have been livestock that were or would have been in a feedlot, on the beginning date of the qualifying drought or fire, as a part of the normal

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business operation of the eligible livestock producer, as determined by the Secretary.

(b) The covered livestock categories are:

- (1) Adult beef cows or bulls,
- (2) Adult buffalo or beefalo cows or bulls,
- (3) Adult dairy cows or bulls,
- (4) Alpacas,
- (5) Deer,
- (6) Elk,
- (7) Emu,
- (8) Equine,
- (9) Goats,
- (10) Llamas,
- (11) Non-adult beef cattle,
- (12) Non-adult buffalo or beefalo,
- (13) Non-adult dairy cattle,
- (14) Poultry,
- (15) Reindeer,
- (16) Sheep, and
- (17) Swine.

(c) Livestock that are not covered include, but are not limited to:

(1) Livestock that were or would have been in a feedlot, on the beginning date of the qualifying drought or fire, as a part of the normal business operation of the eligible livestock producer, as determined by the Secretary;

(2) Yaks;

(3) Ostriches;

(4) All beef and dairy cattle, and buffalo and beefalo that weighed less than 500 pounds on the beginning date of the qualifying drought or fire;

(5) Any wild free roaming livestock, including horses and deer; and

(6) Livestock produced or maintained for reasons other than commercial use as part of a farming operation, including, but not limited to, livestock produced or maintained for recreational purposes, such as:

(i) Roping,

(ii) Hunting,

(iii) Show,

(iv) Pleasure,

(v) Use as pets, or

(vi) Consumption by owner.

§ 1416.205 Eligible grazing losses.

(a) A grazing loss due to drought is eligible for LFP only if the grazing loss for the covered livestock occurs on land that:

(1) Is native or improved pastureland with permanent vegetative cover, or

(2) Is planted to a crop planted specifically for the purpose of providing grazing for covered livestock, as reported on the producer's acreage report, including crops such as forage sorghum or small grains, but not including corn stalks or grain sorghum stalks; and

(3) Is grazing land or pastureland that is owned or leased by the eligible livestock producer that is physically located in a county that is, during the normal grazing period for the specific type of grazing land or pastureland for the county, rated by the U.S. Drought Monitor as having a:

(i) D2 (severe drought) intensity in any area of the county for at least 8 consecutive weeks during the normal grazing period for the specific type of grazing land or pastureland for the county, as determined by the Secretary, or

(ii) D3 (extreme drought) or D4 (exceptional drought) intensity in any area of the county at any time during the normal grazing period for the specific type of grazing land or pastureland for the county, as determined by the Secretary. (As specified elsewhere in this subpart, the amount of potential payment eligibility will be higher than under paragraph (a)(3)(i) of this section where the D4 trigger applies or where the D3 condition as determined by the Secretary lasts at least 4 weeks during the normal grazing period for the specific type of grazing land or pastureland for the county.)

(b) A grazing loss is not eligible for LFP if:

(1) The grazing loss due to drought on land used for haying or grazing under the Conservation Reserve Program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831-3835a), or

(2) The grazing loss occurs on irrigated land, unless the irrigated land has not been irrigated in the program year for which benefits are being requested due to lack of water that is beyond the participant's control.

(c) A grazing loss due to fire qualifies for LFP only if:

(1) The grazing loss occurs on rangeland that is managed by a Federal agency and

(2) The eligible livestock producer is prohibited by the Federal agency from grazing the normal permitted livestock on the managed rangeland due to a fire.

§ 1416.205 Application for payment.

(a) To apply for LFP, the participant that suffered eligible grazing losses:

(1) On or after October 1, 2011, and on or before December 31, 2014, must submit a completed application for payment and required supporting documentation as specified in this part to the administrative FSA county office no later than January 30, 2015; or

(2) On or after January 1, 2015, must submit a completed application for payment and required supporting documentation to the administrative FSA county office no later than 30 calendar days after the end of the calendar year in which the grazing loss occurred.

(b) A participant must also provide a copy of the grower contract, if a contract grower, and other supporting documents required for determining eligibility as an applicant at the time the participant submits the completed application for payment. Supporting documents must include:

- (1) Evidence of loss;
- (2) Current physical location of livestock in inventory;
- (3) Evidence that grazing land or pastureland is owned or leased;
- (4) A report of acreage according to part 718 of this title for the grazing lands incurring losses for which assistance is being requested under this subpart;
- (5) Adequate proof, as determined by FSA that the grazing loss:
 - (i) Was for the covered livestock;
 - (ii) If the loss of grazing occurred as the result of a fire, that the:
 - (A) Loss was due to a fire, and
 - (B) Participant was prohibited by the Federal agency from grazing the normal permitted livestock on the managed rangeland due to a fire;
 - (iii) Occurred on or after October 1, 2011; and
 - (iv) Occurred in the calendar year for which payments are being requested;
- (6) A farm operating plan, if a current farm operating plan is not already on file in the FSA county office; and

(7) Any other supporting documentation as determined by FSA to be necessary to make a determination of eligibility of the participant. Supporting documents include, but are not limited to: Verifiable purchase and sales records; grower contracts; veterinarian records; bank or other loan papers; rendering truck receipts; Federal Emergency Management Agency Records; National Guard records; written contracts; production records; private insurance documents; sales records; and similar documents determined acceptable to FSA.

(c) Data furnished by the participant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without all required data, program benefits will not be approved or provided.

§ 1416.207 Payment calculation.

(a) An eligible livestock producer will be eligible to receive payments for grazing losses for qualifying drought as specified in §1416.205(a), calculated as specified in paragraphs (e) or (f) of this section. Total LFP payments to an eligible livestock producer in a calendar year for grazing losses due to qualifying drought will not exceed 5 monthly payments for the same livestock. Payments calculated in this section or elsewhere with respect to LFP are subject to the adjustments and limits provided for in this part and are also subject to the payment limitations and average adjusted gross income provisions that are contained in subpart A of this part. Payment may only be made to the extent that eligibility is specifically provided for in this subpart. Hence, with respect to drought, payments will be made only as a “1-month” payment, a “3-month” payment, “4-month” payment, or a “5-month” payment based on the provisions of paragraphs (b) through (e) of this section.

(b) To be eligible to receive a 1-month payment, that is a payment equal to the monthly feed cost as determined under paragraph (h) of this section, the eligible livestock producer must own or lease grazing land or pastureland that is physically located in a county that is rated by the U.S. Drought Monitor as having at least a

D2 severe drought (intensity) in any area of the county for at least 8 consecutive weeks during the normal grazing period for the specific type of grazing land or pastureland in the county.

(c) To be eligible to receive a 3-month payment, that is a payment equal to three times the monthly feed cost as determined under paragraph (h) of this section, the eligible livestock producer must own or lease grazing land or pastureland that is physically located in a county that is rated by the U.S. Drought Monitor as having at least a D3 (extreme drought) intensity in any area of the county at any time during the normal grazing period for the specific type of grazing land or pastureland for the county.

(d) To be eligible to receive a 4-month payment, that is a payment equal to four times the monthly feed cost as determined under paragraph (h) of this section, the eligible livestock producer must own or lease grazing land or pastureland that is physically located in a county that is rated by the U.S. Drought Monitor as having at least a D3 (extreme drought) intensity in any area of the county for at least 4 weeks (not necessarily consecutive weeks) during the normal grazing period for the specific type of grazing land or pastureland for the county, or is rated as having a D4 (exceptional drought) intensity in any area of the county at any time during the normal grazing period for the specific type of grazing land or pastureland for the county.

(e) To be eligible to receive a 5-month payment, that is a payment equal to five times the monthly feed cost as determined under paragraph (h) of this section, the eligible livestock producer must own or lease grazing land or pastureland that is physically located in a county that is rated by the U.S. Drought Monitor as having at least a D4 (exceptional drought) in any area of the county for at least 4 weeks (not necessarily consecutive weeks) during the normal grazing period for the specific type of grazing land or pastureland for the county.

(f) The monthly payment rate for LFP for grazing losses due to a qualifying drought, except as specified in

paragraph (g) of this section, will be equal to 60 percent of the lesser of:

(1) The monthly feed cost for all covered livestock owned or leased by the eligible livestock producer, as determined in paragraph (h) of this section, or

(2) The monthly feed cost calculated by using the normal carrying capacity of the eligible grazing land of the eligible livestock producer, as determined in paragraph (j) of this section.

(g) An eligible livestock producer cannot receive more than a 5-month payment for the same covered livestock during the calendar year regardless of the number of drought intensity ratings the county receives; that is, the maximum payment an eligible livestock producer may receive under LFP in a calendar year cannot exceed 60 percent of 5 times the same covered livestock's monthly feed cost.

(h) In the case of an eligible livestock producer that sold or otherwise disposed of covered livestock due to a qualifying drought in 1 or both of the 2 production years immediately preceding the current production year, the payment rate is 80 percent of the monthly payment rate calculated in paragraph (f) of this section.

(i) The monthly feed cost for covered livestock equals the product obtained by multiplying:

(1) 30 days;

(2) A payment quantity equal to the amount referred to in paragraph (h) of this section as the "feed grain equivalent", as determined under paragraph (h) of this section; and

(3) A payment rate equal to the corn price per pound, as determined in paragraph (i) of this section.

(j) The feed grain equivalent equals, in the case of:

(1) An adult beef cow, 15.7 pounds of corn per day or

(2) In the case of any other type or weight of covered livestock, an amount determined by the Secretary that represents the average number of pounds of corn per day necessary to feed that specific type of livestock.

(k) The corn price per pound equals the quotient calculated as follows:

(1) The higher of:

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(i) The national average corn price per bushel for the 12-month period immediately preceding March 1 of the calendar year for which LFP payment is calculated, or

(ii) The national average corn price per bushel for the 24-month period immediately preceding March 1 of the calendar year for which LFP payment is calculated,

(2) Divided by 56.

(1) The monthly feed cost using the normal carrying capacity of the eligible grazing land equals the product obtained by multiplying:

(1) 30 days;

(2) A payment quantity equal to the feed grain equivalent of 15.7 pounds of corn per day;

(3) A payment rate equal to the corn price per pound, as determined in paragraph (i) of this section; and

(4) The number of animal units the eligible livestock producer's grazing land or pastureland can sustain during the normal grazing period in the county for the specific type of grazing land or pastureland, in the absence of a drought or fire, determined by dividing the:

(i) Number of eligible grazing land or pastureland acres of the specific type of grazing land or pastureland, by

(ii) The normal carrying capacity of the specific type of eligible grazing land or pastureland as determined under this subpart.

(m) An eligible livestock producer will be eligible to receive payments for grazing losses due to a fire as specified in §1416.205(c):

(1) For the period, subject to paragraph (1)(2) of this section:

(i) Beginning on the date on which the Federal Agency prohibits the eligible livestock producer from using the managed rangeland for grazing, and

(ii) Ending on the earlier of the last day of the Federal lease of the eligible livestock producer or the day that would make the period a 180 day period.

(2) For grazing losses that occur on not more than 180 days per calendar year.

(3) For 50 percent of the monthly feed cost, as determined under §1416.208(i), pro-rated to a daily rate, for the total number of livestock covered by the

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Federal lease of the eligible livestock producer.

Subpart D—Livestock Indemnity Program

§ 1416.301 Applicability.

(a) This subpart establishes the terms and conditions under which the Livestock Indemnity Program (LIP) will be administered under Title I of the 2014 Farm Bill (Pub. L. 113–79).

(b) Eligible livestock owners and contract growers will be compensated in accordance with §1416.306 for eligible livestock deaths in excess of normal mortality that occurred in the calendar year for which benefits are being requested as a direct result of an eligible adverse weather event or attacks by animals reintroduced into the wild by the Federal Government or protected by Federal law, including wolves and avian predators. The eligible adverse weather event, is one, as determined by the Secretary, that occurs in the program year that directly results in the death of livestock despite the livestock producer's performance of expected and normal preventative or corrective measures and good farming practices. Because feed can be purchased or otherwise obtained in the event of a drought, drought is not an eligible adverse weather event except when anthrax, which is exacerbated by drought, causes the death of eligible livestock.

§ 1416.302 Definitions.

The following definitions apply to this subpart. The definitions in parts 718 of this title and 1400 of this chapter also apply, except where they conflict with the definitions in this section.

Actual livestock beginning inventory means the actual livestock beginning inventory per calendar year for calves or lambs that is calculated from the verifiable or reliable records of death, birthing, docking, inventory, and sales in an open range operation.

Adjusted livestock beginning inventory means the livestock beginning inventory history for calves or lambs on the open range that will be adjusted during

the base period for years for which continuous actual livestock beginning inventory history records are not provided.

Adult beef bull means a male beef breed bovine animal that was at least 2 years old and used for breeding purposes before it died.

Adult beef cow means a female beef breed bovine animal that had delivered one or more offspring before dying. A first-time bred beef heifer is also considered an adult beef cow if it was pregnant at the time it died.

Adult buffalo and beefalo bull means a male animal of those breeds that was at least 2 years old and used for breeding purposes before it died.

Adult buffalo and beefalo cow means a female animal of those breeds that had delivered one or more offspring before dying. A first-time bred buffalo or beefalo heifer is also considered an adult buffalo or beefalo cow if it was pregnant at the time it died.

Adult dairy bull means a male dairy breed bovine animal at least 2 years old used primarily for breeding dairy cows before it died.

Adult dairy cow means a female bovine dairy breed animal used for the purpose of providing milk for human consumption that had delivered one or more offspring before dying. A first-time bred dairy heifer is also considered an adult dairy cow if it was pregnant at the time it died.

Agricultural operation means a farming operation.

Application means the "Livestock Indemnity Program" form.

Approved livestock beginning inventory means the approved livestock beginning inventory for calves or lambs on the open range, calculated by the sum of the yearly actual and transitional livestock beginning inventory history divided by the number of years of livestock beginning inventory history.

Base period means the five consecutive calendar years immediately preceding the calendar year of the LIP application for which the approved livestock beginning inventory is being established for the open range calf or lambing operation.

Buck means a male goat.

CCC means Commodity Credit Corporation.

Commercial use means used in the operation of a business activity engaged in as a means of livelihood for profit by the eligible producer.

Continuous livestock beginning inventory reports means livestock beginning inventory reports submitted by a producer for each calendar year that the producer was involved in the livestock open range operation.

Contract means, with respect to contracts for the handling of livestock, a written agreement between a livestock owner and another individual or entity setting the specific terms, conditions, and obligations of the parties involved regarding the production of livestock or livestock products.

Cow/Ewe Livestock Beginning Inventory History means, the applicable calendar year cow or ewe verifiable livestock beginning inventory records provided to FSA by the open range livestock operation to be used in calculating the transitional livestock beginning inventory history.

Deputy Administrator or DAFP means the Deputy Administrator for Farm Programs, Farm Service Agency, U.S. Department of Agriculture or the designee.

Equine animal means a domesticated horse, mule, or donkey.

Eligible adverse weather event means an extreme or abnormal damaging weather event that is not expected to occur during the loss period for which it occurred, which results in eligible livestock death losses in excess of normal mortality. Eligible adverse weather events include, but are not limited to, as determined by the Deputy Administrator or designee, earthquake; lightning; tornado; tropical storm; typhoon; vog if directly related to a volcanic eruption; winter storm if the winter storm last for three consecutive days and is accompanied by high winds, freezing rain or sleet, heavy snowfall, and extremely cold temperatures; hurricanes; floods; blizzards; wildfires; extreme heat; extreme cold; and anthrax; and disease if exacerbated by another eligible adverse weather event.

Ewe means a female sheep.

Farming operation means a business enterprise engaged in producing agricultural products.

FSA means the Farm Service Agency.

Goat means a domesticated, ruminant mammal of the genus *Capra*, including Angora goats. Goats are further defined by sex (bucks and nannies) and age (kids).

Kid means a goat less than 1 year old.

Lamb means a sheep less than 1 year old.

Livestock beginning inventory history (LBIH) means a minimum of four, up to a maximum of five, calendar years of actual and transitional beginning inventory records used to calculate the approved livestock beginning inventory history for a calf or lamb open range livestock operation.

LBIH reporting date means the LBIH reporting date for which the reports will be accepted for inclusion in the base period for the current calendar year.

Livestock inventory report means a written record showing the producer's annual inventory used to determine the livestock beginning inventory history for LIP purposes for the open range calf or lamb open range livestock operation. The report contains livestock beginning inventory history by open range livestock operation by livestock type or kind.

Livestock owner means one having legal ownership of the livestock for which benefits are being requested on the day such livestock died.

Nanny means a female goat.

Non-adult beef cattle means a beef breed bovine animal that does not meet the definition of adult beef cow or bull. Non-adult beef cattle are further delineated by weight categories of either less than 400 pounds or 400 pounds or more at the time they died.

Non-adult buffalo or beefalo means an animal of those breeds that does not meet the definition of adult buffalo or beefalo cow or bull. Non-adult buffalo or beefalo are further delineated by weight categories of either less than 400 pounds or 400 pounds or more at the time of death.

Non-adult dairy cattle means a dairy breed bovine animal, of a breed used for the purpose of providing milk for human consumption, that do not meet the definition of adult dairy cow or bull. Non-adult dairy cattle are further delineated by weight categories of ei-

ther less than 400 pounds or 400 pounds or more at the time they died.

Normal mortality means the numerical amount, computed by a percentage, as established for the area by the FSA State Committee, of expected livestock deaths, by category, that normally occur during a calendar year for a producer.

Open range operation means livestock production that takes place on large parcels of land where the livestock are not gathered into pens, sheds, or other small areas such that accurate overall inventory and resulting death tallies cannot be completed without a round-up, as determined by the Deputy Administrator.

Poultry means domesticated chickens, turkeys, ducks, and geese. Poultry are further delineated by sex, age, and purpose of production as determined by FSA.

Ram means a male sheep.

Secretary means the Secretary of Agriculture or a designee of the Secretary.

Sheep means a domesticated, ruminant mammal of the genus *Ovis*. Sheep are further defined by sex (rams and ewes) and age (lambs) for purposes of dividing into categories for loss calculations.

State committee, State office, county committee, or county office means the respective FSA committee or office.

Swine means a domesticated omnivorous pig, hog, or boar. Swine for purposes of dividing into categories for loss calculations are further delineated by sex and weight as determined by FSA.

Transitional livestock beginning inventory history for offspring (calves/lambs) means an estimated livestock beginning inventory history, generally determined by multiplying the livestock open range operation's beginning cow or ewe livestock beginning inventory history by the national established birthing rate percentage of 90 percent for calves and 160 percent for lambs. The Deputy Administrator has the authority to make adjustments as necessary. It is to be used in the transitional livestock beginning inventory history calculation process when less than 4 consecutive calendar years of

actual livestock beginning inventory history is available.

United States means all fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

Winter storm means a storm that is severe as to cause fatal injury to livestock and lasts in duration for at least three consecutive days and is accompanied by high winds, freezing rain or sleet, heavy snowfall, and extremely cold temperatures.

§ 1416.303 Eligible owners and contract growers.

(a) In addition, to other eligibility rules that may apply, to be eligible as a:

(1) Livestock owner for benefits with respect to the death of an animal under this subpart, the applicant must have had legal ownership of the eligible livestock on the day the livestock died and under conditions in which no contract grower could have been eligible for benefits with respect to the animal. Eligible types of animal categories for which losses can be calculated for an owner are specified in § 1416.304(a).

(2) Contract grower for benefits with respect to the death of an animal, the animal must be in one of the categories specified on § 1416.304(b), and the contract grower must have had,

(i) A written agreement with the owner of eligible livestock setting the specific terms, conditions, and obligations of the parties involved regarding the production of livestock;

(ii) Control of the eligible livestock on the day the livestock died; and

(iii) A risk of loss in the animal.

(b) A producer seeking payment must not be ineligible under the restrictions applicable to foreign persons contained in § 1416.3(b) and must meet all other requirements of subpart A of this part and other applicable USDA regulations.

§ 1416.304 Eligible livestock.

(a) To be considered eligible livestock for livestock owners, the kind of livestock must be alpacas, adult or non-adult dairy cattle, beef cattle, buffalo, beefalo, elk, emus, equine, llamas, sheep, goats, swine, poultry, deer, or

reindeer and meet all the conditions in paragraph (c) of this section.

(b) To be considered eligible livestock for contract growers, the kind of livestock must be poultry or swine and meet all the conditions in paragraph (c) of this section.

(c) To be considered eligible livestock for the purpose of generating payments under this subpart, livestock must meet all of the following conditions:

(1) Died as a direct result of an eligible adverse weather event or attacks by animals reintroduced into the wild by the Federal Government or protected by Federal law, including wolves and avian predators:

(i) On or after October 1, 2011,

(ii) No later than 60 calendar days from the ending date of the eligible adverse weather event, or the date of the attack by animals reintroduced into the wild by the Federal Government or protected by Federal law, including wolves and avian predators, and

(iii) In the calendar year for which benefits are being requested;

(2) Been maintained for commercial use as part of a farming operation on the day they died; and

(3) Before dying, not have been produced or maintained for reasons other than commercial use as part of a farming operation, such non-eligible uses being understood to include, but not be limited to, any uses of wild free roaming animals or use of the animals for recreational purposes, such as pleasure, hunting, roping, pets, or for show.

(d) The following categories of animals owned by a livestock owner are eligible livestock and calculations of eligibility for payments will be calculated separately for each producer with respect to each category:

(1) Adult beef bulls;

(2) Adult beef cows;

(3) Adult buffalo or beefalo bulls;

(4) Adult buffalo or beefalo cows;

(5) Adult dairy bulls;

(6) Adult dairy cows;

(7) Alpacas;

(8) Chickens, broilers, pullets;

(9) Chickens, chicks;

(10) Chickens, layers, roasters;

(11) Deer;

(12) Ducks;

(13) Ducks, ducklings;

(14) Elk;

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- (15) Emus;
 - (16) Equine;
 - (17) Geese, goose;
 - (18) Geese, gosling;
 - (19) Goats, bucks;
 - (20) Goats, nannies;
 - (21) Goats, kids;
 - (22) Llamas;
 - (23) Non-adult beef cattle;
 - (24) Non-adult buffalo or beefalo;
 - (25) Non-adult dairy cattle;
 - (26) Reindeer;
 - (27) Sheep, ewes;
 - (28) Sheep, lambs;
 - (29) Sheep, rams;
 - (30) Swine, feeder pigs under 50 pounds;
 - (31) Swine, sows, boars, barrows, gilts 50 to 150 pounds;
 - (32) Swine, sows, boars, barrows, gilts over 150 pounds;
 - (33) Turkeys, poults; and
 - (34) Turkeys, toms, fryers, and roasters.
- (e) The following categories of animals are eligible livestock for contract growers and calculations of eligibility for payments will be calculated separately for each producer with respect to each category:
- (1) Chickens, broilers, pullets;
 - (2) Chickens, layers, roasters;
 - (3) Geese, goose;
 - (4) Swine, boars, sows;
 - (5) Swine, feeder pigs;
 - (6) Swine, lightweight barrows, gilts;
 - (7) Swine, sows, boars, barrows, gilts; and
 - (8) Turkeys, toms, fryers, and roasters.
- (f) The following livestock are considered to be ineligible livestock for the purpose of generating payments under this subpart:
- (1) Livestock that have died due to disease where the disease was not exacerbated by an eligible adverse weather event. Diseases that can be prevented by implementing and following acceptable management practices, such as vaccination, are not considered an eligible livestock death loss under LIP. Livestock that die as a result of the disease are not eligible for payment to be generated under LIP when the disease has been determined to not have been exacerbated by an eligible adverse weather event and vaccination or acceptable management practices can or

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have been implemented to prevent such disease. Before COC approves LIP applications for payment for disease, COC through STC, must request determination from the Deputy Administrator or designee whether the specific disease is a disease that is exacerbated by an eligible adverse weather event.

§ 1416.305 Application process.

(a) A producer or contract grower that suffered livestock losses that creates or could create a claim for benefits must:

(1) For losses on or after October 1, 2011, and before January 1, 2015, provide a notice of loss and application for payment to FSA no later than January 30, 2015.

(2) For 2015 calendar year and subsequent year losses, provide a notice of loss to FSA within the earlier of:

(i) 30 calendar days of when the loss of livestock is apparent to the participant or

(ii) 30 calendar days after the end of the calendar year in which the loss of livestock occurred.

(3) The participant must submit the notice of loss required in paragraphs (a)(1) and (2) of this section to the FSA administrative county office that maintains the participant's farm records for the agricultural operation.

(b) In addition to the notices of loss required in paragraph (a)(2) of this section, a participant must also submit a completed application for payment no later than 30 calendar days after the end of the calendar year in which the loss of livestock occurred.

(c) A participant must also provide a copy of the grower contract, if a contract grower, and other supporting documents required for determining eligibility as an applicant at the time the participant submits the completed application for payment. Supporting documents must include:

- (1) Evidence of loss,
- (2) Current physical location of livestock in inventory,
- (3) Physical location of claimed livestock at the time of death,
- (4) Inventory numbers and other inventory information necessary to establish actual mortality as required by FSA,

(5) A farm operating plan, if a current farm operating plan is not already on file in the FSA county office.

(6) Documentation of the adverse weather event from an official weather reporting data source that is determined by FSA to be reputable and available in the public domain such as, but not limited to, NOAA, from which State and County FSA Offices can validate the adverse weather event occurred, and

(7) Documentation to substantiate eligible animal attacks by animals or avian predators showing confirmation of the eligible animal or avian attack obtained from a source such as, but not limited to, the following:

- (i) APHIS,
- (ii) State level Department of Natural Resources, or
- (iii) Other sources or documentation, as determined by the Deputy Administrator.

(8) The livestock producer may supplement additional documentation to support eligible adverse weather events and eligible attacks by animal or avian predators, as determined by the Deputy Administrator.

(d) The participant must provide adequate proof that the death of the eligible livestock occurred as a direct result of an eligible adverse weather event or attacks by animals reintroduced into the wild by the Federal Government or protected by Federal law, including wolves and avian predators, in the calendar year for which benefits are requested. The quantity and kind of livestock that died as a direct result of the eligible adverse weather event during the calendar year for which benefits are being requested may be documented by: Purchase records; veterinarian records; bank or other loan papers; rendering-plant truck receipts; Federal Emergency Management Agency records; National Guard records; written contracts; production records; Internal Revenue Service records; property tax records; private insurance documents; and other similar verifiable documents as determined by FSA.

(e) If adequate verifiable proof of death documentation is not available, the participant may provide reliable records, in conjunction with verifiable beginning and ending inventory

records, as proof of death. Reliable records may include contemporaneous producer records, dairy herd improvement records, brand inspection records, vaccination records, dated pictures, and other similar reliable documents as determined by FSA.

(f) Certification of livestock deaths by third parties may be accepted if verifiable beginning and ending inventory data is available only if verifiable proof of death records or reliable proof of death records in conjunction with verifiable beginning and ending inventory records are not available and both of the following conditions are met:

(1) The livestock owner or livestock contract grower, as applicable, certifies in writing:

(i) That there is no other verifiable or reliable documentation of death available;

(ii) The number of livestock, by category identified in this subpart and by FSA were in inventory at the time the eligible adverse weather event occurred;

(iii) The physical location of the livestock, by category, in inventory when the deaths occurred; and

(iv) Other details required for FSA to determine the certification acceptable; and

(2) The third party is an independent source who is not affiliated with the farming operation such as a hired hand and is not a "family member," defined as a person whom a member in the farming operation or their spouse is related as lineal ancestor, lineal descendant, sibling, spouse, and provides their telephone number, address, and a written statement containing specific details about:

(i) Their knowledge of the livestock deaths;

(ii) Their affiliation with the livestock owner;

(iii) The accuracy of the deaths claimed by the livestock owner or contract grower including, but not limited to, the number and kind or type of the participant's livestock that died because of the eligible adverse weather event; and

(iv) Other information required by FSA to determine the certification acceptable.

(v) Data furnished by the participant and the third party will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without all required data program benefits will not be approved or provided.

(g) Calf and lamb open range livestock operations may provide proof of death by using the livestock beginning inventory history for reporting losses.

(1) For 2015 and subsequent calendar years, livestock inventory reports must be provided to the local county FSA office no later than 30 calendar days after the end of the calendar year for which reports will be accepted for inclusion in the base period for the current calendar year. For the 2011 through 2014 calendar years, producers have until January 30, 2015, to provide the applicable livestock inventory reports. The STC may approve a waiver of the reporting deadline if a participant has not previously received benefits under this method.

(i) Livestock inventory reports must provide an accurate account of livestock beginning inventory for the open range livestock type or kind and must be supported by written verifiable records such as but not limited to: Docking records, sales receipts, shearing records, shipping records, bank records, veterinarian records, IRS records, or other records approved by COC. For purposes of determining beginning livestock inventory, livestock inventory reports may require adjustment by COC, not to exceed normal mortality, for when loss occurs at different points during the growing season (for example, inventories from docking may need little to no adjustment, but sales records at the end of the growing season may require an adjustment to account for a full years of normal mortality).

(ii) The open range livestock operation must certify to the accuracy of the information.

(2) The open range livestock operation is solely responsible for the timely submission and certification of accurate, complete livestock beginning inventory to the county FSA office. Livestock beginning inventory records must be provided for all livestock type or kind.

(i) Records may be requested by the applicable COC or STC, on behalf of FSA. The open range livestock operation must provide such records upon request.

(ii) The COC will explain the procedure for the livestock beginning inventory history to open range livestock operation. COC will determine the livestock beginning inventory history in accordance with §1416.305(g).

(iii) COC will determine if the livestock beginning inventory records are acceptable and calculate the approved livestock beginning inventory history.

(3) The livestock beginning inventory history is calculated utilizing a minimum of 4 years of data and will be updated each subsequent inventory year. The transitional livestock beginning inventory history may contain a maximum of the 4 most recent calendar years and may include actual and transitional livestock beginning inventories. Transitional livestock beginning inventory history will only be used when less than 4 years of actual records are available. Appropriate adjustments to livestock beginning inventory history may be made to account for variations in ewe and cow stocking levels during the period covered by the history.

(4) The open range livestock operation is required to provide beginning livestock inventory records to determine the livestock beginning inventory history, if livestock beginning inventory records are available.

(i) If no acceptable livestock beginning inventory records are available for either calves or lambs, calculate the 4 transitional livestock beginning inventory histories by multiplying the approved birthing rate or drop rate percentage for the open range livestock operation times the applicable cow or ewe livestock beginning inventory history times 65 percent.

(ii) If acceptable livestock beginning inventory records are provided for only one of the most recent 5 calendar years, calculate the 3 transitional livestock beginning inventory histories by multiplying the approved birthing rate or drop rate percentage for the open range livestock operation times the applicable cow or ewe livestock beginning inventory history times 80 percent.

(iii) If acceptable livestock beginning inventory records are provided for only 2 of the most recent 5 calendar years, calculate the 2 transitional livestock beginning inventory histories by multiplying the approved birthing rate or drop rate percentage for the open range livestock operation times the applicable cow or ewe livestock beginning inventory history times 90 percent.

(iv) If acceptable livestock beginning inventory records are provided for only 3 of the most recent 5 calendar years, calculate the one transitional livestock beginning inventory histories by multiplying the approved birthing rate or drop rate percentage for the open range livestock operation times the applicable cow or ewe livestock beginning inventory history times 100 percent.

(v) If acceptable livestock beginning inventory history records containing information for 4 or more of the most recent calendar years are provided, calculate the livestock beginning inventory history by taking a simple average of the actual livestock beginning inventory histories.

(h) For livestock death losses that occurred on or after October 1, 2011, and before January 1, 2015, livestock producers who cannot meet the criteria in paragraphs (d) through (g) of this section may provide acceptable documentation of proof of death and inventories according to the requirements in this paragraph (h).

(1) Documents that may provide acceptable evidence of death include, but are not limited to, any or a combination of the following:

(i) Contemporaneous producer records existing at the time of the event, such as, but not limited to: Personal diary listing births, deaths, unaccounted animals, and date of such event; personal diary of cowboy or herdsman showing animal care; calendar listing births, deaths, unaccounted animals, date livestock turned out on pasture; pictures with a date; brand inspection records; dairy herd improvement records; ear tag documentation or records; and other similar reliable documents. COC may require the livestock producer to file a third-party certification to support the contemporaneous records.

(ii) Third-party certification according to paragraph (f) of this section, except that the third-party is not required to certify to the specific number of livestock.

(2) Documents that may provide acceptable evidence of livestock inventory include, but are not limited to, any or a combination of the following:

- (i) Veterinary records;
- (ii) Canceled check documentation;
- (iii) Balance sheets;
- (iv) Inventory records used for tax purposes;
- (v) Loan records;
- (vi) Bank statements;
- (vii) Farm credit balance sheets;
- (viii) Property tax records;
- (ix) Trucking and/or livestock hauling records;
- (x) Brand inspection records;
- (xi) Sales and purchase receipts;
- (xii) Private insurance documents;
- (xiii) Chattel inspections;
- (xiv) IRS records such schedule F and depreciation schedules;
- (xv) Docking records;
- (xvi) Shearing records;
- (xvii) Ear tag records.

(3) COC may compare livestock numbers and carrying capacity to acreage reports filed by a producer during the calendar year of loss to determine reasonableness.

(4) COC must review all documentation provided by the producer and based upon review of the documentation provided by the producer and personal knowledge of the producer's livestock operation, determine whether the number of death losses reported by the livestock producer are reasonable and whether the application for payment should be approved.

§ 1416.306 Payment calculation.

(a) Under this subpart, separate payment rates for eligible livestock owners and eligible livestock contract growers are specified in paragraphs (b) and (c) of this section, respectively. Payments for LIP are calculated by multiplying the national payment rate for each livestock category by the number of eligible livestock in excess of normal mortality in each category that died as a result of an eligible adverse weather event. Normal mortality

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for each livestock category will be determined by FSA on a State-by-State basis using local data sources including, but not limited to, State livestock organizations and the Cooperative Extension Service for the State. Adjustments will be applied as specified in paragraph (d) of this section.

(b) The LIP national payment rate for eligible livestock owners is based on 75 percent of the average fair market value of the applicable livestock as computed using nationwide prices for the previous calendar year unless some other price is approved by the Deputy Administrator.

(c) The LIP national payment rate for eligible livestock contract growers is based on 75 percent of the average income loss sustained by the contract grower with respect to the dead livestock.

(d) The LIP payment calculated for eligible livestock contract growers will be reduced by the amount the participant received from the party who contracted with the producer to raise the livestock for the loss of income from the dead livestock.

Subpart E—Tree Assistance Program

§ 1416.400 Applicability.

(a) This subpart establishes the terms and conditions under which the Tree Assistance Program (TAP) will be administered under Title I of the Agricultural Act of 2014 (Pub. L. 113–79, the 2014 Farm Bill).

(b) Eligible orchardists and nursery tree growers will be compensated as specified in § 1416.406 for eligible tree, bush, and vine losses in excess of 15 percent mortality, or, where applicable, damage in excess of 15 percent, adjusted for normal mortality and normal damage, that occurred in the calendar year (or loss period in the case of plant disease) for which benefits are being requested and as a direct result of a natural disaster.

§ 1416.401 Administration.

The program will be administered as specified in § 1416.2 and in this subpart.

§ 1416.402 Definitions.

The following definitions apply to this subpart. The definitions in parts 718 of this title and 1400 of this chapter also apply, except where they conflict with the definitions in this section.

Bush means, a low, branching, woody plant, from which at maturity of the bush, an annual fruit or vegetable crop is produced for commercial purposes, such as a blueberry bush. The definition does not cover plants that produce a bush after the normal crop is harvested such as asparagus.

Commercial use means used in the operation of a business activity engaged in as a means of livelihood for profit by the eligible producer.

County committee means the respective FSA committee.

County office means the FSA or U.S. Department of Agriculture (USDA) Service Center that is responsible for servicing the farm on which the trees, bushes, or vines are located.

Cutting means a piece of a vine which was planted in the ground to propagate a new vine for the commercial production of fruit, such as grapes, kiwi fruit, passion fruit, or similar fruit.

Deputy Administrator or DAFP means the Deputy Administrator for Farm Programs, FSA, USDA, or the designee.

Eligible nursery tree grower means a person or legal entity that produces nursery, ornamental, fruit, nut, or Christmas trees for commercial sale.

Eligible orchardist means a person or legal entity that produces annual crops from trees, bushes, or vines for commercial purposes.

FSA means the Farm Service Agency.

Lost means, with respect to the extent of damage to a tree or other plant, that the plant is destroyed or the damage is such that it would, as determined by FSA, be more cost effective to replace the tree or other plant than to leave it in its deteriorated, low-producing state.

Natural disaster means plant disease, insect infestation, drought, fire, freeze, flood, earthquake, lightning, or other natural occurrence of such magnitude or severity so as to be considered disastrous, as determined by the Deputy Administrator.

Normal damage means the percentage, as established for the area by the FSA State Committee, of trees, bushes, or vines in the individual stand that would normally be damaged during a calendar year for a producer.

Normal mortality means percentage, as established for the area by the FSA State Committee, of expected lost trees, bushes, or vines in the individual stand that normally occurs during a calendar year for a producer. This term refers to the number of whole trees, bushes, or vines that are destroyed or damaged beyond rehabilitation. Mortality does not include partial damage such as lost tree limbs.

Seedling means an immature tree, bush, or vine that was planted in the ground or other growing medium to grow a new tree, bush, or vine for commercial purposes.

Stand means a contiguous acreage of the same type of trees (including Christmas trees, ornamental trees, nursery trees, and potted trees), bushes (including shrubs), or vines.

State committee means the respective FSA committee.

Tree means a tall, woody plant having comparatively great height, and a single trunk from which an annual crop is produced for commercial purposes, such as a maple tree for syrup, papaya tree, or orchard tree. Trees used for pulp or timber are not considered eligible trees under this subpart.

Vine means a perennial plant grown under normal conditions from which an annual fruit crop is produced for commercial market for human consumption, such as grape, kiwi, or passion fruit, and that has a flexible stem supported by climbing, twining, or creeping along a surface. Perennials that are normally propagated as annuals such as tomato plants, biennials such as the plants that produce strawberries, and annuals such as pumpkins, squash, cucumbers, watermelon, and other melons, are excluded from the term vine in this subpart.

§ 1416.403 Eligible losses.

(a) To be considered an eligible loss under this subpart:

(1) Eligible trees, bushes, or vines must have been lost or damaged as a

result of natural disaster as determined by the Deputy Administrator;

(2) The individual stand must have sustained a mortality loss or damage loss, as the case may be, in excess of 15 percent after adjustment for normal mortality or damage, to be determined based on:

(i) Each eligible disaster event, except for losses due to plant disease;

(ii) For plant disease, the time period, as determined by the Deputy Administrator, for which the stand is infected.

(3) The loss could not have been prevented through reasonable and available measures; and

(4) The trees, bushes, or vines, in the absence of a natural disaster, would not normally have required rehabilitation or replanting within the 12-month period following the loss.

(b) The damage or loss must be visible and obvious to the county committee representative. If the damage is no longer visible, the county committee may accept other evidence of the loss as it determines is reasonable.

(c) The county committee may require information from a qualified expert, as determined by the county committee, to determine extent of loss in the case of plant disease or insect infestation.

(d) The Deputy Administrator will determine the types of trees, bushes, and vines that are eligible.

(e) An individual stand that did not sustain a sufficient loss as specified in paragraph (a)(2) of this section is not eligible for payment, regardless of the amount of loss sustained.

§ 1416.404 Eligible orchardists and nursery tree growers.

(a) To be eligible for TAP payments, the eligible orchardist or nursery tree grower must:

(1) Have planted, or be considered to have planted (by purchase prior to the loss of existing stock planted for commercial purposes) trees, bushes, or vines for commercial purposes, or have a production history, for commercial purposes, of planted or existing trees, bushes, or vines;

(2) Have suffered eligible losses of eligible trees, bushes, or vines occurring on or after October 1, 2011, as a result

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of a natural disaster or related condition;

(3) Have continuously owned the stand from the time of the disaster until the time that the TAP application is submitted.

(b) A new owner of an orchard or nursery who does not meet the requirements of paragraph (a) of this section may receive TAP payments approved for the previous owner of the orchard or nursery and not paid to the previous owner, if the previous owner of the orchard or nursery agrees to the succession in writing and if the new owner:

(1) Acquires ownership of trees, bushes, or vines for which benefits have been approved;

(2) Agrees to complete all approved practices that the original owner has not completed; and

(3) Otherwise meets and assumes full responsibility for all provisions of this part, including refund of payments made to the previous owner, if applicable.

(c) A producer seeking payment must not be ineligible under the restrictions applicable to citizenship and foreign corporations contained in §1416.3(b) and must meet all other requirements of subpart A of this part.

(d) Federal, State, and local governments and agencies and political subdivisions thereof are not eligible for payment under this subpart.

§ 1416.405 Application.

(a) To apply for TAP, a producer that suffered eligible tree, bush, or vine losses that occurred:

(1) On or after October 1, 2011, through December 31, 2014, must provide an application for payment and supporting documentation to FSA by the later of January 31, 2015, or 90 calendar days after the disaster event or date when the loss is apparent to the producer.

(2) During the 2015 calendar year or later, must provide an application for payment and supporting documentation to FSA within 90 calendar days of the disaster event or date when the loss of trees, bushes, or vines is apparent to the producer.

(b) The producer must submit the application for payment within the time specified in paragraph (a) of this sec-

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tion to the FSA administrative county office that maintains the producer's farm records for the agricultural operation.

(c) A complete application includes all of the following:

(1) A completed application form provided by FSA;

(2) An acreage report for the farming operation as specified in part 718, subpart B, of this title;

(3) Subject to verification and a loss amount determined appropriate by the county committee, a written estimate of the number of trees, bushes, or vines lost or damaged that is certified by the producer or a qualified expert, including the number of acres on which the loss occurred;

(4) Sufficient evidence of the loss to allow the county committee to calculate whether an eligible loss occurred; and

(5) A farm operating plan, if a current farm operating plan is not already on file in the FSA county office.

(d) Before requests for payment will be approved, the county committee:

(1) Must make an eligibility determination based on a complete application for assistance;

(2) Must verify actual qualifying losses and the number of acres involved by on-site visual inspection of the land and the trees, bushes, or vines;

(3) May request additional information and may consider all relevant information in making its determination; and

(4) Must verify actual costs to complete the practices, as documented by the producer.

§ 1416.406 Payment calculations.

(a) Payment to an eligible orchardist or nursery tree grower for the cost of replanting or rehabilitating trees, bushes, or vines damaged or lost due to a natural disaster, in excess of 15 percent damage or mortality (adjusted for normal damage or mortality), will be calculated as follows:

(1) For the cost of planting seedlings or cuttings, to replace lost trees, bushes, or vines, the lesser of:

(i) 65 percent of the actual cost of the practice, or

(ii) The amount calculated using rates established by the Deputy Administrator for the practice.

(2) For the cost of pruning, removal, and other costs incurred for salvaging damaged trees, bushes, or vines, or in the case of mortality, to prepare the land to replant trees, bushes, or vines, the lesser of:

(i) 50 percent of the actual cost of the practice, or

(ii) The amount calculated using rates established by the Deputy Administrator for the practice.

(b) An orchardist or nursery tree grower that did not plant the trees, bushes, or vines, but has a production history for commercial purposes on planted or existing trees and lost the trees, bushes, or vines as a result of a natural disaster, in excess of 15 percent damage or mortality (adjusted for normal damage or mortality), will be eligible for the salvage, pruning, and land preparation payment calculation as specified in paragraph (a)(2) of this section. To be eligible for the replanting payment calculation as specified in paragraph (a)(1) of this section, the orchardist or nursery grower who did not plant the stock must be a new owner who meets all of the requirements of § 1416.404(b) or be considered the owner of the trees under provisions appearing elsewhere in this subpart.

(c) Eligible costs for payment calculation include costs for:

(1) Seedlings or cuttings, for tree, bush, or vine replanting;

(2) Site preparation and debris handling within normal horticultural practices for the type of stand being re-established, and necessary to ensure successful plant survival;

(3) Pruning, removal, and other costs incurred to salvage damaged trees, bushes, or vines, or, in the case of tree mortality, to prepare the land to replant trees, bushes, or vines;

(4) Chemicals and nutrients necessary for successful establishment;

(5) Labor to plant seedlings or cuttings as determined reasonable by the county committee; and

(6) Labor used to transplant existing seedlings established through natural regeneration into a productive tree stand.

(d) The following costs are not eligible:

(1) Costs for fencing, irrigation, irrigation equipment, protection of seedlings from wildlife, general improvements, re-establishing structures, and windscreens.

(2) Any other costs not listed in paragraphs (c)(1) through (6) of this section, unless specifically determined eligible by the Deputy Administrator.

(e) Producers must provide the county committee documentation of actual costs to complete the practices, such as receipts for labor costs, equipment rental, and purchases of seedlings or cuttings.

(f) When lost stands are replanted, the types planted may be different from those originally planted. The alternative types will be eligible for payment if the new types have the same general end use, as determined and approved by the county committee. Payments for alternative types will be based on the lesser of rates established to plant the types actually lost or the cost to establish the alternative used. If the type of plantings, seedlings, or cuttings differs significantly from the types lost, the costs may not be approved for payment.

(g) When lost stands are replanted, the types planted may be planted on the same farm in a different location than the lost stand. To be eligible for payment, site preparation costs for the new location must not exceed the cost to re-establish the original stand in the original location.

(h) Eligible orchardists or nursery tree growers may elect not to replant the entire eligible stand. If so, the county committee will calculate payment based on the number of qualifying trees, bushes, or vines actually replanted.

(i) If a practice, such as site preparation, is needed to both replant and rehabilitate trees, bushes, or vines, the producer must document the expenses attributable to replanting versus rehabilitation. The county committee will determine whether the documentation of expenses detailing the amounts attributable to replanting versus rehabilitation is acceptable. In the event that the county committee determines

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the documentation does not include acceptable detail of cost allocation, the county committee will pro-rate payment based on physical inspection of the loss, damage, replanting, and rehabilitation.

(j) The cumulative total quantity of acres planted to trees, bushes, or vines for which a producer may receive payment under this part for losses that occurred on or after October 1, 2011, can not exceed 500 acres per program year.

§ 1416.407 Obligations of a participant.

(a) Eligible orchardists and nursery tree growers must execute all required documents and complete the TAP-funded practice within 12 months of application approval.

(b) Eligible orchardist or nursery tree growers must allow representatives of FSA to visit the site for the purposes of certifying compliance with TAP requirements.

(c) Producers who do not meet all applicable requirements and obligations will not be eligible for payment.

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES—MARKETING ASSISTANCE LOANS AND LOAN DEFICIENCY PAYMENTS FOR 2008 THROUGH 2012

Subpart A—General

Sec.

- 1421.1 Applicability and interest.
- 1421.2 Administration.
- 1421.3 Definitions.
- 1421.4 Eligible producers.
- 1421.5 Eligible commodities.
- 1421.6 Beneficial interest.
- 1421.7 Requesting marketing assistance loans and loan deficiency payments.
- 1421.8 Eligible quantity.
- 1421.9 Basic loan rates.
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- 1421.11 Spot checks.
- 1421.12 Production evidence.
- 1421.13 Special loan deficiency payments.
- 1421.14 Obtaining peanut loans.

Subpart B—Marketing Assistance Loans

- 1421.100 Applicability.
- 1421.101 Maturity dates.
- 1421.102 Adjustment of basic loan rates.
- 1421.103 Authorized storage.
- 1421.104 Marketing assistance loan making.

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- 1421.105 Farm-stored marketing assistance loans.
- 1421.106 Warehouse-stored marketing assistance loan collateral.
- 1421.107 Warehouse receipts.
- 1421.108 Transfers and reconcentrations.
- 1421.109 Personal liability of the producer.
- 1421.110 Commodity certificate exchanges.
- 1421.111 Loan settlement.
- 1421.112 Foreclosure.
- 1421.113 Recourse marketing assistance loans.

Subpart C—Loan Deficiency Payments

- 1421.200 Applicability.
- 1421.201 Loan deficiency payment rate.
- 1421.202 Loan deficiency payment quantity.
- 1421.203 Personal liability of the producer.

Subpart D—Grazing Payments for the 2008 Through 2012 Crop of Wheat, Barley, Oats, and Triticale

- 1421.300 Applicability.
- 1421.301 Administration.
- 1421.302 Eligible producer and eligible land.
- 1421.303 Time and method for application.
- 1421.304 Payment amount.
- 1421.305 Misrepresentation and scheme or device.
- 1421.306 Refunds; joint and several liability.

Subpart E—Designated Marketing Associations for Peanuts

- 1421.400 Applicability and abbreviations.
- 1421.401 DMA responsibilities.
- 1421.402 DMA eligibility to process loans and loan deficiency payments.
- 1421.403 DMA approval.
- 1421.404 Financial security.
- 1421.405 Liability.
- 1421.406 Reporting requirements.
- 1421.407 Suspension and termination.
- 1421.408 Prohibited activity.
- 1421.409 Monitoring payment limitations.
- 1421.410 Recordkeeping requirements.
- 1421.411 Forms.
- 1421.412 Powers of attorney.
- 1421.413 Liens and waivers.
- 1421.414 Producer request to a DMA for an MAL or LDP.
- 1421.415 Processing marketing assistance loans.
- 1421.416 Processing loan deficiency payments.
- 1421.417 Disbursing MAL and LDP proceeds.
- 1421.418 Submitting MAL and LDP documentation to FSA.
- 1421.419 MAL or LDP servicing.
- 1421.420 Inspections and reviews.
- 1421.421 Appeals.

AUTHORITY: 7 U.S.C. 7231–7237 and 7931–7936; 15 U.S.C. 714b and 714c, and Public Law 110–246.